
United States
Circuit Court of Appeals

For the Ninth Circuit.

ELECTRICAL RESEARCH PRODUCTS, INC.,
a corporation,

✓
Appellant,

vs.

W. D. GROSS,

Appellee.

Transcript of Record

In Two Volumes

VOLUME II

Pages 529 to 1043

Upon Appeal from the District Court of the United
States for the Territory of Alaska,
Division Number One

FILED

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PAUL S. O'BRIEN,

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States for the Territory of Alaska,
Division Number One

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR AUGUST, 1931.

Working sheet shows following items:

Wages: M. Wentworth, \$30.00—C. Shearn, \$80.00—

H. McLean, \$40.00—C. Tuckett, \$200.00.

Film Rental: Fox Films 25%, \$159.99—Warner Bros. Films 25%, \$303.66—Paramount Films 25%, \$461.19—Tiffany Films 25%, \$45.70—Educational Films 25%, \$34.95—Pathe Films 25%, \$148.85.

Film Frt: Aaa S. S. Co., \$22.45.

General Expense: None.

Replacement & Repairs: None

Adv: Chronicle, \$119.20.

Lights, Water, Tele: C. L. & P. Co., \$87.20.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts:\$2,853.20

Totals: Wages, \$350.00

Film Rental, \$1,154.34

Film Frt., \$25.45

General Expense, None

Replacement & Repairs, None

Adv., \$119.20

Lights, Water, Tele., \$87.20

Heat, None

Ins. & Taxes, None

Rental, \$125.89

Total.....\$1,862.08

Net Profit.....\$ 991.12

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR SEPTEMBER, 1931.

Working sheet shows following items:

Wages: H. McLean, \$40.00—M. Wentworth, \$30.00
—C. Tuckett, \$200.00—C. Shearn, \$100.00.Film Rental: Universal Films 25%, \$64.25—Fox
Films 25%, \$251.39—Warner Bros. Films 25%,
\$310.43—Paramount Films 25%, \$322.49—Edu-
cational Films 25%, \$37.98 — Tiffany Films
25%, \$44.80.

Film Frt: Aaa S. S. Co., \$23.80.

General Expense: None.

Replacement & Repairs: Bowles Co., \$43.25—Na-
tional Theatre Supply, \$59.22.

Adv: Chronicle. \$107.80.

Lights, Water, Tel: C. L. & P. Co., \$73.40.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts:\$2,966.30

Totals: Wages, \$370.00

Film Rental, \$1,031.34

Film Frt., \$23.80

General Expense, None

Replacement & Repairs, \$224.47

Adv., \$107.80

Lights, Water, Tele., \$73.40

Heat, None

Ins. & Taxes, None

Rental, \$125.89

Total.....\$1,955.70

Net Profit.....\$1,010.60

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR OCTOBER, 1931.

Working sheet shows following items:

Wages: J. Grigsby, \$30.00—H. McLean, \$40.00—C. Tuckett, \$200.00—C. Shearn, \$100.00.

Film Rental: Fox Films 25%, \$193.62.

Film Frt: Aaa S. S. Co., \$19.25.

General Expense: None.

Replacement & Repairs: Nat. Theatre Supply, \$2.35
—O. Johanson, \$100.00—Al Nordstrom, \$95.00.

Adv: Chronicle, \$112.85.

Lights, Water, Tele: C. L. & P. Co., \$79.35.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts:\$2,607.40

Totals: Wages, \$370.00

Film Rental, \$193.62

Film Frt., \$19.25

General Expense, None

Replacement & Repairs, \$197.35

Adv., \$112.85

Lights, Water, Tele., \$79.35

Heat, None

Ins. & Taxes, None

Rental, \$125.89

Total.....\$1,098.31

Net Profit.....\$1,509.09

[368]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR NOVEMBER, 1931.

Working sheet shows following items:

Wages: Chas. Tuckett, \$200.00 — K. Harcastle, \$30.00—H. McLean, \$40.00—C. Shearn, \$100.00.
 Film Rental: Pathe Films 25%, \$85.20—Warner Bros. 25%, \$281.20—Pathe Films 25%, \$89.75—Tiffany Films 25%, \$79.82—Paramount Films 25%, \$283.82—Paramount Films 25%, \$92.56.
 Film Frt: Aaa S. S. Co., \$10.75—Ketch. Wharf, \$16.02.

General Expense: None.

Replacement & Repairs: Lewis Blandine, \$26.50—J. B. Hunchberger, \$210.60 — M. H. Smith, \$332.50—O. C. Crieder, \$87.75.

Adv: Chronicle, \$127.90.

Lights, Water, Tele: C. L. & P. Co., \$80.90.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts:\$2,312.00

Totals: Wages: \$370.00

Film Rental, \$911.35

Film Frt., \$26.77

General Expense, None

Replacement & Repairs, \$657.35

Adv., \$127.90

Lights, Water, Tele., \$80.90

Heat, None

Ins. & Taxes, None

Rental, \$125.89

Total.....\$2,300.16

Net Profit.....\$ 11.84

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR DECEMBER, 1931.

Working sheet shows following items:

Wages: H. McLean, \$40.00—K. Hardcastle, \$30.00
—C. Tuckett, \$200.00—C. Shearn, \$100.00.

Film Rental: Educational Films 25%, \$74.30 —
Warner Bros. Films, 25%, \$279.73 — Pathe
Films 25%, \$153.81—Paramount Films 25%,
\$277.60—Fox Films 25%, \$487.12.

Film Frt: Aaa S. S. Co., \$3.67.

General Expense: None.

Replacement & Repairs: Nat. Theatre Supply,
\$61.91.

Adv: Chronicle, \$130.00.

Lights, Water, Tele: C. L. & P. Co., \$83.95.

Heat: Stand. Oil, \$265.73.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts:\$1,438.35

Totals: Wages, \$370.00

Film Rental, \$1,272.56

Film Frt., \$3.67

General Expense, None

Replacement & Repairs, \$61.91

Adv., \$130.00

Lights, Water, Tele., \$83.95

Heat, \$265.73

Ins. & Taxes, None

Rental, \$125.89

Total.....\$2,313.71

Net Loss.....\$ 875.36

[370]

(Testimony of Charles M. Tuckett.)

EXHIBIT No. I-3.

PROFIT AND LOSS STATEMENT

1932

COLISEUM THEATRE

KETCHIKAN, ALASKA

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 977.84	\$ 1,601.69		\$ 623.85
February	1,428.90	1,544.44		115.54
March	1,414.75	1,691.84		277.09
April	1,491.10	1,104.87	\$ 386.23	
May	1,193.90	1,343.59		149.69
June	733.35	622.90	110.45	
July	1,047.63	1,044.33	3.30	
August	1,192.67	1,176.62	16.05	
September	1,387.20	1,633.80		246.60
October	1,784.13	1,226.86	557.27	
November	1,244.10	1,721.31		477.21
December	1,034.95	671.07	363.88	
	<hr/>	<hr/>	<hr/>	<hr/>
	\$14,930.52	\$15,383.32	\$ 1,437.18	\$ 1,889.98
		14,930.52		1,437.18
		<hr/>		<hr/>
Proof		\$ 452.80		\$ 452.80

Memorandum:

Net Loss for Year 1932\$ 452.80
 Depreciation taken for 1932 4,152.20

\$ 4,605.00 (Loss)

(Testimony of Charles M. Tuckett.)

Witness Tuckett read the foregoing part of Exhibit I-3 to the jury and testified that it showed the profits and losses of the Ketchikan theatre during 1932, that it represented a net loss for the year, without depreciation; that he had spoken of net profit and loss before and meant thereby the total of individual months [371] and not for the year; that the loss after depreciation was \$4,605.00; that these records for 1932 were kept just as the preceding ones. [372]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JAN. 1932.

Working sheet shows following items:

Wages: H. McLean, \$40.00—K. Harcastle, \$30.00
—C. Tuckett, \$175.00.

Film Rental: Paramount Films 25%, \$83.62—R.
K. O. Films, 25%, \$59.27—Paramount Films
25%, \$279.03—Fox Films 25%, \$208.84—War-
ner Bros. Films 25%, \$253.45.

Film Freight: Aaa. S. S. Co., \$5.06.

General Expense: None.

Replacement, Repairs: Ketchikan Spruce, \$29.18—
C. W. Young Hdwe., \$126.96.

Adv: Chronicle, \$111.75.

Light, Water, Tele: C. L. & P. Co., \$94.40.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$ 977.84

Totals: Wages, \$245.00

Film Rental, \$884.21

Film Freight, \$5.06

General Expense, None

Replacement, Repairs, \$156.14

Adv., \$111.75

Light, Water, Tele., \$94.40

Heat, None

Insurance, Taxes, None

Rental, \$105.13

Hauling, None.

Total..... 1601.69

Net Loss.....\$ 623.85

[373]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR FEB. 1932.

Working sheet shows following items:

Wages: H. McLean, \$40.00—K. Harcastle, \$30.00
—Chas. Tuckett, \$150.00—B. F. Moe, \$100.00
(C) Sheam, \$25.00—Bon Marche, \$70.60.

Film Rental: Cosmopolitan Film 25%, \$50.00—Edu-
cational Film 25%, \$40.11—Paramount Film
25%, \$253.28—Fox Film 25%, \$205.07—War-
ner Bros. Film 25%, \$284.16.

Film Freight: None.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$80.00.

Light, Water, Tele: C. L. & P. Co., \$74.20.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: Ketchikan Express, \$37.00.

Gross Receipts:\$1428.90

Totals: Wages, \$415.60

Film Rental, \$832.51

Film Freight, None

General Expense, None

Replacement, Repairs, None

Adv., \$80.00

Light, Water, Tele., \$74.20

Heat, None

Insurance, Taxes, None

Rental, \$105.13

Hauling, \$37.00

Total..... 1544.44

Net Loss.....\$ 115.54

[374]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR MARCH, 1932.

Working sheet shows following items:

Wages: C. Tuckett, \$150.00—C. Shearn, \$50.00—
Jane Woodruff, \$30.00—H. McLean, \$40.00.Film Rental: Fox Film 25%, \$249.79—Paramount
25%, \$256.33—Warner Bros. 25%, \$317.97—
Educational Film 25%, \$75.10—Pathe Film
25%, \$88.12—Pathe Film 25%, \$13.12.

Film Freight: Aaa. S. S. Co., \$24.38.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$94.50.

Light, Water, Tele: C. L. & P. Co., \$95.40.

Heat: Standard Oil, \$102.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1414.75

Totals: Wages, \$270.00

Film Rental, \$1000.43

Film Freight, \$24.38

General Expense, None.

Replacement, Repairs, None

Adv., \$94.50

Light, Water, Tele., \$95.40

Heat, \$102.00—Insurance, Taxes, None

Rental, \$105.13—Hauling, None

Total 1691.84

Net Loss.....\$ 277.09

[375]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR APRIL, 1932.

Working sheet shows following items:

Wages: C. Tuckett, \$150.00—C. Shearn, \$50.00—

H. McLean, \$40.00—J. Woodward, \$30.00.

Film Rental: Paramount Pictures 25%, \$258.56—

Fox Films 25%, \$158.05.

Film Freight: Aaa S. S. Co., \$12.28.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$125.25.

Light, Water, Tele: C. L. & P. Co., \$79.60.

Heat: Standard Oil, \$96.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1491.10

Totals: Wages, \$270.00

Film Rental, \$416.61

Film Freight, \$12.28

General Expense, None

Replacement, Repairs, None

Adv., \$125.25

Light, Water, Tele., \$79.60

Heat, \$96.00—Insurance, Taxes, None

Rental, \$105.13—Hauling, None.

Total 1104.87

Net Profit.....\$ 386.23

[376]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR MAY, 1932.

Working sheet shows following items:

Wages: C. Shearn, \$50.00—M. Wentworth, \$30.00
—H. McLean, \$40.00—C. Tuckett, \$150.00.Film Rental: Miner Merchant Bank 25%, \$126.55
Miner Merchant Bank 25%, \$129.75—Warner
Bros. Film 25%, \$128.26—Paramount Film
25%, \$275.83.

Film Freight: Aaa. S. S. Co., \$10.72.

General Expense: None.

Replacement, Repairs: None.

Adv: Ketchikan Chronicle, \$122.40.

Light, Water, Tele: C. L. & P. Co., \$73.25.

Heat: Standard Oil, \$101.70.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1193.90

Totals: Wages, \$270.00

Film Rental, \$660.39

Film Freight, \$10.72

General Expense, None

Replacement, Repairs, None

Adv., \$122.40

Light, Water, Tele., \$73.25

Heat, \$101.70—Insurance, Taxes, None

Rental, \$105.13—Hauling, None.

Total 1343.50

Net Loss.....\$ 149.69

[377]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JUNE, 1932.

Working sheet shows following items:

Wages: C. Shearn, \$25.00—M. Wentworth, \$30.00
—Chas. Tuckett, \$150.00—Homer McLean,
\$40.00.

Film Rental: Aaa. S. S. Co., (film) 25%, \$52.50.

Film Freight: Aaa. S. S. Co., \$17.22.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$121.20.

Light, Water, Tele: C. L. & P. Co., \$81.85.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$ 733.35

Totals: Wages, \$245.00

Film Rental, \$52.50

Film Freight, \$17.22

General Expense, None

Replacement, Repairs, None

Adv., \$121.20

Light, Water, Tele., \$81.85

Heat, None—Insurance, Taxes, None

Rental, \$105.13—Hauling, None.

Total 622.90

Net Profit.....\$ 110.45

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JULY, 1932.

Working sheet shows following items:

Wages: C. Shearn, \$50.00—M. Wentworth, \$30.00
—C. Tuckett, \$75.00—H. McLean, \$40.00—L.
Cawthorne, \$75.00.

Film Rental: Fox Film 25%, \$209.54—Fox Film
25%, \$193.62—Fox Film 25%, \$5.16.

Film Freight: Aaa. S. S. Co., \$76.53.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$74.00.

Light, Water, Tele: C. L. & P. Co., \$65.35.

Heat: Standard Oil, \$45.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1047.63

Totals: Wages, \$270.00

Film Rental, \$408.32

Film Freight, \$76.53

General Expense, None

Replacement, Repairs, None

Adv: \$74.00

Light, Water, Tele., \$65.35

Heat, \$45.00—Insurance, Taxes, None.

Rental, \$105.13—Hauling, None.

Total 1044.33

Net Profit.....\$ 3.30

[379]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR AUG. 1932.

Working sheet shows following items:

Wages: M. Wentworth, \$25.00—H. McLean, \$40.00
—H. E. Cawthorne, \$150.00—C. Shearn, \$50.00.

Film Rental: Paramount Films 25%, \$204.47—
R. K. O. 25%, \$27.58—Fox Film 25%, \$100.21
R. K. O. Film 25%, \$27.22—Educational
Film 25%, \$87.91—Fox Film 25%, \$20.82—Fox
Film 25%, \$158.22.

Film Freight: Aaa. S. S. Co., \$11.70.

General Expense: Miscell. Expense, \$3.36.

Replacement, Repairs: None.

Adv: Chronicle, \$72.40.

Light, Water, Tele: C. L. & P. Co., \$65.60.

Heat: Standard Oil, \$27.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1192.67

Totals: Wages, \$265.00

Film Rental, \$626.43

Film Freight, \$11.70

General Expense, \$3.36

Replacement, Repairs, None.

Adv., \$72.40

Light, Water, Tele., \$65.50

Heat, \$27.00—Insurance, Taxes, None

Rental, \$105.13—Hauling None.

Total 1176.62

Net Profit.....\$ 16.05

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR SEPT. 1932.

Working sheet shows following items:

Wages: E. Hanson, \$22.00—L. Cawthorne, \$150.00

M. Wentworth, \$25.00—H. McLean, \$40.00.

Film Rental: Fox Film 25%, \$179.95—Vitagraph

Film 25%, \$236.00—Educational Film 25%,

\$76.82—Vitagraph Film 25%, \$191.86—Para-

mount Film 25%, \$167.84—Universal Film

25%, \$26.71—Fox Film 25%, \$174.32—Fox

Film 25%, \$20.71.

Film Freight: A. S. S. Co., \$19.20.

General Expense: None.

Replacement, Repairs: None.

Adv: Queen Anne Candy, \$42.00 — Chronicle,
\$73.90.

Light, Water, Tele: C. L. & P. Co., \$73.36.

Heat: Standard Oil, \$9.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1387.20

Totals: Wages, \$237.00

Film Rental, \$1074.21

Film Freight, \$19.20

General Expense, None

Replacement, Repairs, None

Adv., \$115.90

Light, Water, Tele., \$73.36

Heat, \$9.00—Insurance, Taxes, None

Rental, \$105.13—Hauling None.

Total 1633.80

Net Loss.....\$ 246.60

[381]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT, OCT. 1932.

Work sheet shows following items:

Wages: E. Hanson, \$50.00—Al. Cawthorne, \$150.00
—C. Harcastle, \$25.00—H. McLean, \$40.00.

Film Rental: Education Film 25%, \$81.94—Fox
Film 25%, \$162.42—Paramount Film 25%,
\$200.41—Vitagraph Film 25%, \$194.02.

Film Freight: Aaa. S. S. Co., \$15.17.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$67.70—Station KGBU, \$25.00.

Light, Water, Tele: C. L. & P. Co., \$79.07.

Heat: Standard Oil, \$31.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1784.13

Totals: Wages, \$265.00

Film Rental, \$638.79

Film Freight, \$15.17

General Expense, None

Replacement, Repairs, None

Adv., \$92.70

Light, Water, Tele., \$79.07

Heat, \$31.00—Insurance, Taxes, None

Rental, \$105.13—Hauling, None.

Total 1226.86

Net Profit.....\$ 557.27

[382]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR NOV. 1932.

Working sheet shows following items:

Wages: E. Hanson, \$50.00—C. Harcastle, \$25.00—
H. McLean, \$40.00—L. Cawthorne, \$150.00.Film Rental: Warner Bros. 25%, \$192.86—Fox
Films 25%, \$177.29—Paramount Films 25%,
\$276.52—Warner Bros., 25%, \$241.00— Fox
Film 25%, \$128.65.

Film Freight: Aaa. S.S. Co., \$13.00.

General Expense: None.

Replacement, Repairs: None.

Adv.: K. G. B. U., \$25.00—Chronicle, \$62.04—Queen
Anne Candy, \$15.00

Light, Water, Tele: C. L. & P. Co., \$85.27.

Heat: Standard Oil, \$48.00.

Insurance, Taxes: Charles & Harcastle, \$86.55.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1244.10

Totals: Wages, \$265.00.

Film Rental, \$1016.32

Film Freight, \$13.00

General Expense, None

Replacement, Repairs, None

Adv., \$102 04

Light, Water, Tele., \$85.27

Heat, \$45.00

Insurance, Taxes, \$86.55

Rental, \$105.13

Hauling, None

Total..... 1721.31

Net Loss.....\$477.21

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR DEC. 1932.

Working sheet shows following items:

Wages: L. Cawthorne, \$150.00—H. McLean, \$40.00
—E. Hanson, \$50.00—Margaret Reed, \$25.00.

Film Rental: R. K. O. Films 25%, \$60.57.

Film Freight: Aaa. S.S. Co., \$1.10.

General Expense: None.

Replacement, Repairs: M. H. Smith & Son, \$16.55.

Adv: Chronicle. \$61.15—KGBU, \$25.00.

Light, Water, Tele: C. L. & P. Co., \$79.57.

Heat: Standard Oil, \$57.00.

Insurance, Taxes: None.

Rental: Rental all 6%, \$105.13.

Hauling: None.

Gross Receipts:\$1034.95

Totals: Wages, \$265.00.

Film Rental, \$60.57.

Film Freight, \$1.10.

General Expense, None.

Replacement, Repairs, \$16.55.

Adv., \$86.15.

Light, Water, Tele., \$79.57.

Heat, \$57.00.

Insurance, Taxes, None.

Rental, \$105.13.

Hauling, None.

Total 671.07

Net Profit.....\$ 363.88

(Testimony of Charles M. Tuckett.)

EXHIBIT No. I-4.

PROFIT AND LOSS STATEMENT

1933

COLISEUM THEATRE

KETCHIKAN, ALASKA

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 1,004.68	\$ 966.45	\$ 38.23	
February	988.30	1,003.44		\$ 15.14
March	695.05	794.30		99.25
April	634.79	896.71		261.92
	\$ 3,322.82	\$ 3,660.90	\$ 38.23	\$ 376.31
		3,322.82		38.23
Proof		\$ 338.08		\$ 338.08

Memorandum:

Net Loss for Year 1933.....	\$ 338.08
(Plus) Depreciation taken for (4) four months.....	1,042.18
	\$ 1,380.26
	(Loss)

House leased to B. F. Shearer on May 1st, 1933.

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JAN. 1933.

Working sheet shows following items:

Wages: Al Cawthorne, \$150.00—H. McLean, \$40.00
—M. Reed. \$25.00—Earl Hanson, \$50.00.

Film Rental: R.K.O. Film 25%, \$31.87—Sheffield
Film 25%, \$25.00—Paramount Film 25%,
282.29.

Film Freight: Aaa. S.S. Co., \$16.41.

General Expense: None.

Replacement, Repairs: National Theatre Supply,
\$28.30.

Adv: KGBU, \$25.00—Chronicle, \$48.30.

Lights, Water, Tele: C. L. & P. Co., \$77.45.

Heat: Standard Oil, \$77.40.

Insurance, Taxes: None.

Rental: Rental all 6%, \$89.43.

Hauling: None.

Gross Receipts:\$1004.68

Totals: Wages, \$265.00

Film Rental, \$339.16

Film Freight, \$16.41

General Expense, None

Repairs, \$28.30

Adv., \$73.30

Lights, Water, Tele, \$77.45

Heat, \$77.40

Insurance, Taxes, None

Rental, \$89.43

Hauling, None.

Total..... 966.45

Net Profit.....\$ 38.23

[385]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR FEB. 1933.

Working sheet shows following items:

Wages: H. McLean, \$40.00—M. Reed, \$25.00—
E. Hanson, \$50.00—H. Cawthorne, \$150.00.

Film Rental: Educational Film 25%, \$20.00—R.K.O.

Film 25%, \$51.23—Fix Film 25%, \$143.42—

Warner Film 25%, \$205.76.

Film Freight: Aaa. S.S. Co., \$4.23.

General Expense: None.

Replacement, Repairs: None.

Adv: KGBU, \$25.00—Chronicle, \$48.10—U. S.
Slides, \$2.50.

Lights, Water, Tele: C.I.P. Co., \$79.67.

Heat: Standard Oil, \$69.00.

Insurance Taxes: None.

Rental: Rental all 6%, \$89.43.

Hauling: None.

Gross Receipts:\$ 988.30

Totals: Wages, \$265.00

Film Rental, \$400.41

Film Freight, \$4.23

General Expense, None

Repairs, None

Adv., \$75.60

Light, Water, Tele., \$79.67

Heat, \$69.00

Insurance, Taxes, None

Rental, \$89.43

Hauling, None

Total..... 1003.44

Net Loss.....\$ 15.14

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR MARCH, 1933.

Working sheet shows following items:

Wages: E. Hanson, \$50.00—H. E. Cawthorne,
\$150.00—H. McLean, \$40.00—M. Reed, \$25.00.

Film Rental: Educational Films 25%, \$21.44—
Paramount, \$272.70.

Film Freight: None.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle Paper, \$56.05.

Lights, Water, Tele: C. L. P. Co., \$89.68.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$89.43.

Hauling: None.

Gross Receipts:\$ 695.05

Totals: Wages, \$265.00

Film Rental, \$294.14

Film Freight, None

General Expense, None

Repairs, None

Adv., \$56.05

Lights, Water, Tele, \$89.68

Heat, None

Insurance, Taxes, None

Rental, \$89.43

Total..... 794.30

Net Loss.....\$ 99.25

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR APRIL, 1933.

Working sheet shows following items:

Wages: M. Reed, \$15.00—L. Cawthorne, \$125.00—
Roy Dolner, \$50.00.Film Rental: Fox Film 25%, \$93.42—R. K. O. Film
25%, \$49.62—Warner Bros. Film 25%, \$21.34
—Sheffield Film 25%, \$25.00.

Film Freight: None.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle Paper, \$56.35—Chronicle Paper,
\$48.67.Lights, Water, Tele: C. L. & P. Co., \$73.36—C. L.
& P. Co., \$79.27.Heat: Standard Oil, \$72.00—Standard Oil, \$57.00—
Standard Oil, \$41.25.

Insurance, Taxes: None.

Rental: Rental all 6%, \$89.43.

Hauling: None.

Gross Receipts:\$ 634.79

Totals: Wages: \$190.00

Film Rental, \$189.38

Film Frt., None

General Expense, None

Repairs, None

Adv., \$105.02

Lights, Water, Tele., \$152.63

Heat. \$170.25

Insurance, Taxes, None

Rental, \$89.43

Hauling, None

Total..... 896.71

Net Loss.....\$ 261.92

(Testimony of Charles M. Tuckett.)

Witness Tuckett testified that Exhibit I-4 was a profit and loss statement for the Ketchikan Coliseum theatre covering the first four months of 1933, from January to May 1, covering the entire period while defendant was operating it up to the time he turned it over to Shearer that was made up in the same way as Exhibits I-1, I-2, and I-3, shows exactly the same things in the same way, the receipts or the total receipts of the Ketchikan Coliseum theatre by month, and the total expenses by month are shown, calculated in the same manner as the others were calculated, and the profits and losses are shown and that the depreciation of \$1380.26 was taken in the same manner as the others. [388]

Thereupon Witness Tuckett further testified: That covers the entire period up to the time that defendant leased his theatres to Shearer commencing April, 1931, when the equipment was taken out; during that period there were quite drastic reductions in salaries, as they had been cut, and were cut again from \$250.00 which we originally got in 1929 and 1930, to \$150.00; our operator from \$170.00 to \$40.00 in 1933, the janitor from \$175.00 or \$170.00 was cut to \$50.00 and other minor or running expenses were cut as much as they could be; that started in April, 1931, right after the equipment was taken out and reached their low in May, 1933; this document that I now have is the work sheet of capital investment and depreciation of the Ketchikan Coliseum Theatre.

(Testimony of Charles M. Tuckett.)

Whereupon said document was offered in evidence by defendant, to which plaintiff objected upon the ground that it was incompetent, irrelevant and immaterial, which objection was overruled, to which ruling plaintiff then excepted, whereupon said document was submitted in evidence and marked defendant's exhibit I-5, and reads: [389]

DEPRECIATION RESERVE

	1932		1933	
	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.
Coliseum				
Acquired		\$11,351.17		\$9,624.63
Deprec. to	1,726.54		\$ 1,726.54	
Kimball C				
Acquired		None	—	—
Deprec. to	1,117.78			
F. & F.				
Acquired		None	—	—
Deprec. to	788.00			
Machine				
Acquired		—	—	—
Deprec. to	—			
Sound E				
Acquired		7,975.00		5,775.00
Deprec. to			1,100.00	
Sound E	1,100.00			
Acquired	200.00	2,800.00	300.00	2,500.00
Deprec.				
	152.20		3,126.54	
		21,026.17		17,899.63
		1,261.57		1,073.98
		105.13		89.43

(Testimony of Charles M. Tuckett.)

Whereupon said document was offered in evidence by defendant, to which plaintiff objected upon the ground that it was incompetent, irrelevant and immaterial, which objection was overruled, to which ruling plaintiff then excepted, whereupon said document was submitted in evidence and marked defendant's exhibit I-5, and reads: [389]

DEFENDANT'S EXHIBIT I-5.

COLISEUM THEATRE—KETCHIKAN—SCHEDULE OF CAPITAL INVESTMENT & DEPRECIATION RESERVE

	1929		1930		1931		1932		1933		
	Initial Cost	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.
Coliseum Theatre Bldg. 5%											
Acquired in 1923	\$34,530.79		\$16,530.79		\$14,804.25		\$13,077.71		\$11,351.17		\$9,624.63
Deprec. taken to & incl. 1929		\$18,000.00		\$17,265.54		\$ 1,726.54		\$ 1,726.54		\$ 1,726.54	
Kimball Organ 10%											
Acquired 1923	11,178.07		3,353.40		2,235.59		1,117.78		None	—	—
Deprec. taken to & incl. 1929		7,824.67		1,117.81		1,117.81		1,117.78			
F. & F. 10%											
Acquired in 1923	12,729.01		2,553.68		1,280.78		788.00		None	—	—
Deprec. taken to & incl. 1929		10,175.33		1,272.90		1,272.90		788.00			
Machine 10%											
Acquired in 1922	5,000.00		1,000.00		500.00		None		—	—	—
Deprec. taken to & incl. 1929		4,000.00		500.00		500.00		—			
Sound Equipment 10%											
Acquired in 1929	11,000.00		10,175.00		9,075.00		7,975.00		7,975.00		5,775.00
Deprec. taken to & incl. 1929		825.00		1,100.00		1,100.00				1,100.00	
Sound Equipment 10%											
Acquired in May 1, 1931	—	—	—	—	—	—	3,000.00	200.00	2,800.00	300.00	2,500.00
Deprec. (Orig. Cost \$3,000.00)											
		40,825.00		5,717.25		5,717.25		4,152.20		3,126.54	
	74,437.87		33,612.87		27,895.62		25,178.37		21,026.17		17,899.63
	4,466.27		2,016.77		1,673.74		1,510.70		1,261.57		1,073.98
			168.07		139.48		125.89		105.13		89.43

(Testimony of Charles M. Tuckett.)

Whereupon Witness Tuckett further testified: The capital Investment in 1929 of defendant's Ketchikan theatre was \$75,437.87 which was an actual appraisal made by Mr. Clausen and myself that year used as a basis for defendant's income tax purposes after the new equipment had been installed, which was included in the appraisal, and which was the real investment in 1929 for the theatre, including machinery, sound equipment and all furnishings, upon which we figured 6% as rent and took off 6% depreciation each year; all items of expenses shown on defendant's exhibits I-1, I-2, I-3 and I-4 are just as they occur on defendant's books, but there might be one or two exceptions; I do not say every one of the checks drawn in the Ketchikan books, defendant's exhibits H-6 and H-7 belonged to the Ketchikan theatre, but the majority of them did; I could not say all items belong to Ketchikan; I did not take in items that belonged to other theatres; all the items are correctly summarized, and the entire transaction is just as it shows on our books; all items charged or credited to Ketchikan were taken from the books and belonged to the Ketchikan theatre; this document that I now have in my hand gives the monthly average profit and loss in the Coliseum Theatre in Ketchikan.

Whereupon said document was offered in evidence, to which the plaintiff objected on the ground that it was incompetent, irrelevant and immaterial, which objection was overruled, to which ruling the plaintiff then excepted; whereupon said document

(Testimony of Charles M. Tuckett.)
was received in evidence, marked

DEFENDANT'S EXHIBIT I-6,

and reads:

AVERAGE MONTHLY PROFIT AND LOSS
STATEMENT

COLISEUM THEATRE

Ketchikan, Alaska

Monthly average profit or loss without depreciation	1929	\$2338.29 1/2 profit per mth.
Monthly average profit or loss with depreciation	1929	\$1861.95 3/4 profit per mth.
		[390]
Monthly average profit or loss without depreciation	1930	\$2407.89 profit per mth.
Monthly average profit or loss with depreciation	1930	\$1931.45 profit per mth.
Monthly average profit or loss without depreciation	1931	\$816.67 5/6 profit per mth.
Monthly average profit or loss with depreciation	1931	\$340.24 1/2 profit per mth.
Monthly average profit or loss without depreciation	1932	\$37.72 1/3 loss per mth.
Monthly average profit or loss with depreciation	1932	\$383.75 loss per mth.
Monthly average profit or loss without depreciation (4 mths)	1933	\$28.17 1/3 loss per mth.
Monthly average profit or loss with depreciation (4 mths)	1933	\$115.02 1/6 loss per mth.
Monthly average profit or loss June 1, 1929 to May 1, 1931 (W E installed) (\$56,969.94—23 mths) (profit) no depreciation		\$2476.96 profit per mth.
Monthly average profit or loss same conditions and time but with depreciation (\$10,958.06)		\$2000.52 profit per mth.

(Testimony of Charles M. Tuckett.)

(W E not installed)

Monthly average profit or loss	May 1, 1931 to May 1, 1933	\$187.55
(\$4501.15 profit—23 mths)		profit per mth.
No depreciation		
Monthly average profit or loss		
same conditions and time but with depreciation (\$9005.82)		\$187.70 loss per mth.

Thereupon Witness Tuckett further testified: Defendant's exhibit I-6 shows the average monthly losses calculated per year starting from the time defendant put in sound equipment until the property was turned over to Shearer, showing average monthly profit for 1929, without depreciation, of \$2,338.29 and, with depreciation taken off, \$1,861.85, and an average monthly profit for 1930, without depreciation, \$2,407.89, and, after depreciation taken off, \$1,931.45, and an average monthly profit for 1931, without depreciation, \$816.67 and, after depreciation, \$340.24, and for 1932, without depreciation, \$37.73 loss per month and, after [391] depreciation, \$383.75, and for the four first months of 1933 when we had the theater, without depreciation, \$28.17 loss per month, and, with depreciation, \$115.02 loss per month, which takes up to the time the theatre was turned over to Shearer; that sheet also shows the average profit and loss per month during the time the Western Electric Company equipment was in the Ketchikan theatre commenc-

(Testimony of Charles M. Tuckett.)

ing from date of installation in May or June, 1929, up to the time the equipment was taken out in about April, 1931, and a monthly average profit from June 1, 1929, to May 1, 1931, when the Western Electric Equipment was installed, which is 23 months, without depreciation, \$2,476.96 and, after taking depreciation, \$2,000.52; that sheet shows the average monthly profit and loss between the time that the equipment was replevined and the time the theatre was turned over to Shearer showing monthly average profit, May 1, 1931, to May 1, 1933, without depreciation, \$187.55, and, after depreciation, \$187.70; I can calculate the difference between the average monthly profit while the machinery was in and the average monthly profit and loss after the machinery had been taken out between those two periods, which shows an average monthly loss in profits, without depreciation, per month during that period of \$2,289.41, and, after depreciation, \$2,188.-22; the loss and profits for the entire 23 month period from the time the machine was taken out until Shearer's contract was entered into, was \$52,656.43, and, after depreciation, \$50,326.06; the fact that some of the items in the Ketchikan books, exhibits H-6 and H-7, do not belong to the Ketchikan theatre, did not affect the tabulation because I took only the Ketchikan items; this document that I now have is a copy of Shearer's financial statement to Gross of the Ketchikan theatre covering the period up to January 1, 1935, and shows the profit or loss Shearer made.

(Testimony of Charles M. Tuckett.)

Witness Tuckett further testified that Defendant's [392] Exhibit J covered the statements that had been offered in evidence up to January 1, 1935; that he didn't know how long the old equipment was kept in Alaska, wouldn't be positive about it, that it shows that he wasn't in Alaska at that time; that it shows the first two months along with the others. [393]

Whereupon said document was offered in evidence, to which plaintiff objected on the ground that it was incompetent, irrelevant, and immaterial and not the true measure of damages, which objection was overruled, to which plaintiff then excepted, whereupon said document was received in evidence and marked

DEFENDANT'S EXHIBIT J,

and reads:

ALASKA EMPIRE THEATRES, INC.
 Operating Statement
 May 31, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Receipts 85.60

Less Expenses:

Film Rent	10.00
Advertising	9.39
Rent	200.00
Heat, Light and Water	15.34
Proj. Rm. and House Sup.	1.55
Repairs	1.50
Sal. Oper. & Manager	51.50
	289.28

Loss—Coliseum Theatre, Ketchikan.....\$ 203.68

Theatre operating part-time, with old-type sound equipment.

(Testimony of Charles M. Tuckett.)

June 30, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Organ Rental \$ 2.50

Less Expenses:

Rent \$ 200.00

Light 32.02

Proj. Room & House Supples 11.70

Repairs to Sound 86.08

Freight 11.25

Insurance, Pub. Liability 5.24

Total Expense \$ 346.29

Loss—Coliseum Theatre, Ketchikan.....\$ 343.79

July 31, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Receipts \$1,142.78

Less Expenses:

[394]

Film Rental 387.26

Advt. Bill Poster 66.33

Advt. Newspaper 84.28

Advt. Misc. 10.15

Rent 200.00

Heat, Light and Water 64.86

Proj. Room & House Sup. .40

Operators Salary 10.00

Manager Salary 50.00

Insurance 4.41

Sound Rental 22.60

Misc. Salaries 63.80

Misc. Expense .75

Total Expenses 964.84

Profit—Coliseum Theatre, Ketchikan.....\$ 177.94

(Testimony of Charles M. Tuckett.)

August, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts	988.23
Rental on Building	85.00
	<hr/>
	\$1,073.23

Less Expenses:

Film Rental	384.87
Advt. Bill Posters	37.67
Advt. Newspapers	69.30
Advt. Miscellaneous	24.60
Heat, Light and Power	40.98
Proj. Room & House Sup.	25.06
Salary—Manager	75.00
Salary—Operator	45.00
Salaries—Miscl.	60.83
Freight	10.74
Insurance	5.39
Sound Rental	22.62
Rent	200.00
Miscellaneous Expense	1.50
Sound Installation Expense	107.74
Telephone and Telegraph	7.98
Office Supplies	3.41
Postage	3.50
Licenses and Taxes	7.50
Tax on Checks	.46

Total Expense	<hr/>	1,134.15
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Loss—Coliseum Theatre, Ketchikan.....	\$	60.92
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[395]

(Testimony of Charles M. Tuckett.)

September 30, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Receipts 2,397.82

Less Expenses:

Film Rental 526.22

Advt. Bill Posters 94.68

Advt. Newspapers 112.85

Advt. Miscel. 38.78

Heat, Light and Water 85.01

Proj. Room & House Supplies 9.05

Salary—Manager 87.50

Salary—Operator 45.00

Salaries Manager 122.00

Freight 20.86

Insurance 5.39

Sound Rental 90.48

Rent 200.00

Repairs 91.44

Telephone and Telegraph 6.68

Office Supplies 2.83

Postage 2.00

Tax on Checks .56

		1,541.33
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		Profit—Coliseum Theatre, Ketchikan\$ 856.49
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(Testimony of Charles M. Tuckett.)

October, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Receipts, Box Office	\$2,369.90
Slide Rental	2.00

Expenses:

Film Rental	691.62
Advt. Bill Posters	113.29
Advt. Newspapers	105.91
Advt. Miscellaneous	79.99
Heat, Light and Power	103.73
Proj. Room & House Sup.	77.29
Salary—Manager	120.56
Salary—Operator	52.50
Salary—Miscl.	290.15
Freight	16.67
Insurance	5.39
Sound Rental	113.10
Rent	200.00
Repairs	29.87
Miscellaneous Expense	52.00
Telephone and Telegraph	17.34
Office Supplies	18.20
Postage	3.50
Uniforms	38.00
Tax on Checks	.67

Total Expense	<u>2,129.78</u>
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Profits—Coliseum Theatre, Ketchikan\$ 242.12

[396]

(Testimony of Charles M. Tuckett.)

November, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts	1,858.30
Slide Rental	5.00
	<hr/>
	1,863.30

Expenses:

Film Rental	520.75
Advt. B. P.	40.40
Advt. N. P.	100.27
Advt. Misc.	65.64
Heat, Light and Power	119.80
Proj. Room & House Sup.	20.70
Salary—Manager	87.50
Salary—Operator	60.00
Salaries—Misc.	173.62
Freight	16.37
Employees Fidelity Bond	21.36
Insurance	5.39
Sound Rental	90.48
Rent	200.00
Misc. Expense	14.75
Telephone and Telegraph	6.21
Office Supplies	.33
Postage	3.13
Tax on Checks	.91

Total Expenses	<hr/> 1,547.61
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Profit—Coliseum Theatre, Ketchikan\$ 315.69

(Testimony of Charles M. Tuckett.)

December, 1933

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts \$ 666.71

Expenses:

Film Rental	232.00
Advt. B. P.	28.67
Advt. N. P.	67.20
Advt. Misc.	46.26
Heat, Light & Power	100.60
Proj. Room & House Sup.	23.05
Salary—Manager	87.50
Salary—Operator	28.00
Salaries—Misc.	141.90
Freight	12.12
Insurance	11.99
Sound Rental	90.48
Rent	200.00
Telephone and Telegraph	2.49
Postage	1.62
Tax on Checks	.52
Repairs	7.23

Total Expenses	1,081.63
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Loss—Coliseum Theatre, Ketchikan\$ 414.92

[397]

(Testimony of Charles M. Tuckett.)

January, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Box Office \$ 876.30

Expenses:

Film Rental	284.10
Advt. B. P.	20.48
Advt. N. P.	38.52
Rent	200.00
Heat and Light	77.35
Proj. Room & House Sup.	11.98
Salary—Operator	41.00
Salary—Manager	58.34
Freight	16.95
Sound Rental	90.48
Misel. Salaries	105.00
Advt. Misel.	29.32
Tax on Checks	.58
Postage	5.00
Insurance	5.39

Total Expense	984.48
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Loss—Coliseum Theatre, Ketchikan	\$ 108.18
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(Testimony of Charles M. Tuckett.)

February, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts \$1,258.61

Expenses:

Film Rental	\$ 322.25
Freight	11.50
Adv. B. P.	32.18
Adv. N. P.	62.78
Adv. Misc.	36.01
Salary—Manager	58.34
Salary—Operator	53.00
Salary—Misc.	134.24
Proj. Room & House Sup.	30.76
Rent	200.00
Heat and Light	75.28
Telephone and Telegraph	5.16
Office Supplies	.94
Postage	1.50
Taxes and Licenses	
Tax on Checks	.76
Insurance	5.39
Sound Rental	113.10
Maintenance	1.05

Total Expenses	1,144.24
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Profit—Coliseum Theatre, Ketchikan\$ 114.37

[398]

(Testimony of Charles M. Tuckett.)

March, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts \$2,811.61

Expenses:

Film Rental 646.10Cost of Added Attractions 252.75Freight 20.33Adv. B. P. 66.36Adv. N. P. 98.61Adv. Misc. 53.80Salary—Manager 93.75Salary—Operator 90.00Salary—Misc. 159.68Proj. Room & House Sup. 78.76Rent 200.00Heat and Light 119.65Telephone and Telegraph 4.75Office Supplies 4.35Postage 7.25Taxes and Licenses 22.57Tax on Checks .63Insurance 10.51Sound Rental 90.48

Repairs on Sound Equipment

Maintenance 12.31

		2,032.64
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		\$ 778.97
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Profit—Coliseum Theatre, Ketchikan\$ 778.97

(Testimony of Charles M. Tuckett.)

April, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts	\$2,321.30
Slide Rental	6.50
	<hr/>
	2,327.80

Expenses:

Film Rental	616.75
Cost of Added Attractions	14.50
Freight	15.22
Adv. B. P.	78.99
Adv. N. P.	72.15
Adv. Misc.	45.85
Salary—Manager	100.00
Salary—Operator	90.00
Salaries—Misc.	216.11
Proj. Room & House Sup.	145.78
Rent	200.00
Heat and Light	97.35
Telephone and Telegraph	10.03
Office Supplies	6.12
Postage	6.25
Taxes and Licenses	
Tax on Checks	.80
Insurance	15.51
Sound Rental	98.55
Repairs on Sound Equipment	2.28
Maintenance	18.65
Rental of Uniforms	6.00
Travel Expense	

Total Expenses	<hr/> \$1,856.89
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Profit—Coliseum Theatre, Ketchikan\$ 470.91

[399]

(Testimony of Charles M. Tuckett.)

May, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Box Office Receipts \$2,696.05

Expenses:

Film Rental	631.19
Cost of Added Attractions	84.60
Freight	24.68
Adv. B. P.	42.10
Adv. N. P.	112.52
Adv. Miscel.	44.34
Salary—Manager	100.00
Salary—Operator	90.00
Salaries—Miscel.	207.01
Proj. Room & House Sup.	28.85
Rent	200.00
Heat and Light	81.90
Telephone and Telegraph	9.89
Office Supplies	2.14
Postage	10.21
Taxes and Licenses	9.00
Tax on Checks	.77
Insurance	31.73
Sound Rental	90.48
Repairs on Sound Equip.	
Maintenance	13.00
Rental of Uniforms	6.00
Travel Expense	37.50

Total Expenses	<u>1,857.91</u>
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Profit—Coliseum Theatre, Ketchikan	<u>\$ 838.14</u>
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(Testimony of Charles M. Tuckett.)

November, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Receipts:	\$3,681.15
Expenses:	2,125.83

Profit—Coliseum Theatre, Ketchikan\$1,555.32

December, 1934

COLISEUM THEATRE, Ketchikan, Alaska

Receipts:	\$3,170.76
Expenses:	2,667.61

Profit—Coliseum Theatre, Ketchikan\$ 503.15

Thereupon witness Tuckett read to the jury the respective monthly loss or profit for each month as shown in Exhibit J. [400]

Thereupon witness Tucket further testified: I do not know how long the old equipment was in Ketchikan as I was not in Alaska at the time. Defendant's Exhibit K for identification is our work sheet of capital investment, Juneau Coliseum Theatre.

Whereupon the following proceedings were had:

Mr. HELLENTHAL: I offer it in evidence.

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial, and not the true measure of damages.

The COURT: Overruled. It may be received.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: It hasn't been shown to contain the original entries or to be based on the original entries.

Mr. HELLENTHAL: We will make that showing.

The COURT: I was assuming that.

Mr. HELLENTHAL: We will make that showing, Your Honor.

The COURT: It will be admitted with that understanding.

Mr. ROBERTSON: Exception.

Whereupon said document was received in evidence, marked Defendant's Exhibit K, and reads as follows: [401]

TRE—JUNEAU.

	1932		1933	
	Cap. Invest.	Deprec.	Cap. Invest.	
Year -				
Improv				
Amend ⁰		1,150.00		
5% De ⁰		850.00		
Capital	17,400.00		15,400.00	
Furnit				
Acquir				
Amend ⁰		2,100.00		
	4,200.00		2,100.00	
Organ ⁰	9,100.00	1,300.00	7,800.00	
Machin				
Amend				
Sound ⁰	6,875.00	1,100.00	5,775.00	
193.....				
ref ⁰	2,800.00	300.00	250.00	
Deprec ⁰		6,800.00		
Cap. I	40,375.00		33,575.00	
	2,422.50		2,014.50	
	201.87		167.88	

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: It hasn't been shown to contain the original entries or to be based on the original entries.

Mr. HELLENTHAL: We will make that showing.

The COURT: I was assuming that.

Mr. HELLENTHAL: We will make that showing, Your Honor.

The COURT: It will be admitted with that understanding.

Mr. ROBERTSON: Exception.

Whereupon said document was received in evidence, marked Defendant's Exhibit K, and reads as follows: [401]

DEFENDANT'S EXHIBIT K.

SCHEDULE OF CAPITAL INVESTMENT & DEPRECIATION RESERVE—COLISEUM THEATRE—JUNEAU.

	Initial Cost	1929		1930		1931		1932		1933	
		Deprec. Reserve	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.	Deprec.	Cap. Invest.
Year - 1921	23,000.00										
Improvements - 1924	17,000.00										
	<u>40,000.00</u>										
Amended 12/31/29 5%		11,500.00		1,150.00		1,150.00		1,150.00		1,150.00	
5% Deprec. on \$17,000.00 5%		5,100.00		850.00		850.00		850.00		850.00	
Capital Invest., Less Deprec.			23,400.00		21,400.00		19,400.00		17,400.00		15,400.00
Furniture & Fixtures)											
Acquired in 1925)	21,000.00										
Amended Reserve 10%		10,500.00		2,100.00		2,100.00		2,100.00		2,100.00	
			10,500.00		8,400.00		6,300.00		4,200.00		2,100.00
Organ - 1929	13,000.00	None	13,000.00	1,300.00	11,700.00	1,300.00	10,400.00	1,300.00	9,100.00	1,300.00	7,800.00
Machinery - Cost - 1921	5,000.00										
Amended Reserve 1929 10%		4,500.00		500.00	500.00	None	—	—	—	—	—
Sound Equipment	11,000.00	825.00	10,175.00	1,100.00	9,075.00	1,100.00	7,975.00	1,100.00	6,875.00	1,100.00	5,775.00
193... Sound Improvement & replacement 10%	—	—	—	—	—	—	3,000.00	200.00	2,800.00	300.00	250.00
Depreciation Taken		32,425.00		7,000.00		6,500.00		6,700.00		6,800.00	
Cap. Investment - Balance	90,000.00		57,575.00		50,575.00		47,075.00		40,375.00		33,575.00
		6%	3,454.50		3,034.50		2,824.50		2,422.50		2,014.50
		Monthly	287.87		252.87		235.38		201.87		167.88

(Testimony of Charles M. Tuckett.)

Thereupon defendant's Exhibits marked K-1 to K-5, both inclusive, for identification, were handed to witness Tuckett, who testified that said Exhibit K-1 was profit and loss statement and work sheet covering defendant's Juneau Theatre for 1929, K-2 for 1930, K-3 for 1931, K-4 for 1932, and K-5 for the first four months of 1933.

Whereupon said documents were offered in evidence, to which plaintiff objected on the ground that each of them was incompetent, irrelevant and immaterial and not the true measure of damages, which objection was overruled and to each of which rulings plaintiff then excepted, whereupon said documents were received in evidence, marked respectively, defendant's Exhibits K-1, K-2, K-3, K-4, and K-5, and read respectively, as follows:

(Testimony of Charles M. Tuckett.)

EXHIBIT No. K-1

PROFIT AND LOSS STATEMENT

1929

COLISEUM THEATRE

Juneau, Alaska

	Total Receipts	Total Expenses	Net Profits	Net Loss
January	\$ 2,612.35	\$ 2,222.44	\$ 389.91	
February	2,418.00	2,056.36	361.64	
March	2,589.85	2,353.69	236.16	
April	3,061.56	2,125.52	936.04	
May	4,506.40	2,185.70	2,320.70	
June	4,025.00	2,369.29	1,655.71	
July	6,308.40	3,175.80	3,132.60	
August	5,547.15	3,846.33	1,700.82	
September	5,393.35	3,237.23	2,156.12	
October	5,501.71	4,020.55	1,481.16	
November	6,068.02	3,053.56	3,014.46	
December	4,985.99	3,537.45	1,448.54	
	\$53,017.78	\$34,183.92	\$18,833.86	
	34,183.92			
Proof	\$18,833.86			

Memorandum:

Net Profit for year 1929	\$18,833.86
(Less) Depreciation for year 1929	5,700.00
Total Net Profit for year 1929	\$13,133.86

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JAN. 1929.

Working sheet shows following items:

Wages: H. Sinclair, \$35.00—Z. Gross, \$50.00—
Leon Drews, \$114.20—Chas. Tuckett, \$100.00—
Geo. Cortez, \$28.70—L. Lemmieux, \$100.00.

Film Rental Acct: Warner Bros. 50%, \$291.75—
Educational Films, \$51.25—United Artists
Corp., \$188.74—Pathe Film Exchange, \$416.82.

Film Freight Expense: Pacific S. S. Co., \$39.00.

General Expense: Alaska S. S. Co., \$7.50.

Insurance & Taxes: 1/12 of Taxes on Theatre.

Rental: Rental all 6%, \$287.87.

General Replacement & Repairs: Cap. Electric Co.,
\$13.63—Juno. Lmb. Co., \$30.36—Thos. Hdwe.,
\$11.30—Juno. Young Hdwe., \$15.60—Stand.
Furn. Co., \$60.00.

Adv: Empire Printg. Co., \$96.80—Harrisons Re-
ports, \$12.00—Exhibitor Herald, \$3.00.

Lights, Water, Tele: Telephone, \$10.00—Juno
Water Co., \$6.00—A. E. L. & P. Co., \$135.55.

Heat: Standard Oil Co., \$21.37—Cole Transfer,
\$16.50—Service Transfer, \$16.50.

Gross Receipts:\$2612.35

Totals: Wages, \$427.90

Film Rental Acct., \$948.56

Film Freight Expense, \$39.00

General Expense, \$7.50

Insurance & Taxes, \$63.00

(Testimony of Charles M. Tuckett.)

Rental, \$287.87

General Replacement & Repairs, \$130.89

Adv., \$111.80

Lights, Water, Tele., \$151.55

Heat, \$54.37

Total..... 2222.44

Net Profit.....\$ 389.91

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: L. Lundstrom—Al. Lundstrom—L. Lemmieux—Chas. Tuckett—Leon Drews—Geo. Cortez. [404]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR FEB., 1929

Working sheet shows following items:

Wages: Leon Drews, \$114.20—Chas. Tuckett, \$100.00—Geo. Cortez, \$55.00—L. Sinclair, \$35.00—Z. Gross, \$50.00.

Film Rental: United Artists 50%, \$79.70—Educational Films 50%, \$51.25—Famous Players, Lasky 50%, \$56.20—Pathe Film Exchange 50%, \$104.96—Famous Players Lasky 50%, \$232.08—Educational Films 50%, \$64.25.

Film Freight Expense: Juneau Transfer, \$51.00—Pac. S. S. Co., \$45.30—Alaska S. S. Co., \$14.20
Gross Transfer, \$20.79.

(Testimony of Charles M. Tuckett.)

General Expense: Juno Chamber of Commerce,
 \$10.00—A. J. M. C., \$5.09—J. B. Burford Co.,
 \$3.00—B. F. Shearer, \$66.40.

General Replacement, Repairs: Harris Hdwe.
 Co., \$52.85—Juno Young Hdwe., \$20.25—Thos.
 Hdwe., \$35.14—Juno Lumber, \$73.20.

Advertising: Juno Chamber of Commerce, \$40.00
 —Empire Prntg. Co., \$76.70—Western Poster
 Co., 50%, \$13.09.

Lights, Water, Tele: Juno Water, \$6.50—A. E. L.
 & P. Co., \$138.70—Juno Telephone, \$10.00.

Heat: Standard Oil Co., \$19.68—Cole Transfer
 Co., \$11.50.

Insurance & Taxes: Allen Shattuck, \$49.50—City
 of Juneau, 1/12 of taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$2418.00

Totals: Wages, \$354.20

Film Rental, \$588.44

Film Freight Expense \$131.29

General Expense, \$84.49

General Replacements, Repairs, \$181.44

Advertising, \$129.79

Lights, Water, Tele., \$155.20

Heat, \$31.18

Insurance & Taxes, \$112.50

Rental, \$287.87—Total 2056.36

Net Profit\$ 361.64

(Testimony of Charles M. Tuckett.)

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: Al Lundstrom—Harry Gabin—Chas. Tuckett—Leon Drews—Geo. Cortez—L. Lemmieux. [405]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MARCH, 1929.

Working sheet shows following items:

Wages. L. Lemmieux, \$100.00—Geo. Cortez, \$60.00—Chas. Tuckett, \$100.00—L. Sinclair, \$35.00—Z. Gross, \$50.00—Dick McGinn, \$77.16.

Film Rental: Columbia Film Exch. 50%, \$105.00—Pathe Film 50%, \$215.18—Columbia Film Exch. 50%, \$24.88—United Artists 50%, \$169.82—Warner Bros., 50%, \$152.90.

Film Freight: Jacks Transfer, \$5.25—Alaska S. S. Co., \$196.00.

General Expense: None.

Replacements, Repairs Preparatory to Sound Equipment: Juneau Paint, \$5.25—Cap. Elec., \$5.83—Thomas Hdwe., \$1.90—Juno Lmb. Co., \$24.00—A. M. Geyer, \$88.00—Juno Young Hdwe., \$61.25—Handy Andy, \$10.70.

Adv: Empire Printg. Co., \$68.15.

Lights, Water, Tele: A. E. L. & P. Co., \$363.44—Juno Water Co., \$6.50—Juno Tele. Co., \$9.50.

Heat: Standard Oil, \$10.11—Cash Cole, \$9.00.

(Testimony of Charles M. Tuckett.)

Ins. & Taxes: Allen Shattuck, \$48.00—1/12 Taxes
City, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$2589.85

Totals: Wages, \$422.16

Film Rental, \$667.78

Film Freight, \$201.25

General Expense, None

Replacements, Repairs preparatory to sound
equipment, \$196.93

Adv. \$68.15

Lights, Water, Tele., \$379.44

Heat, \$19.11—Ins. & Taxes, \$111.00

Rental, \$287.87—Total 2353.69

Net Profit.....\$ 236.16

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: Al Lundstrom—L. Lemmieux — Geo. Cortez — Dick McGinn — Chas. Tuckett. [406]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR APRIL, 1929.

Working sheet shows following items:

Wages: Chas. Tuckett, \$100.00—Geo. Cortez, \$60.00—L. Sinclair, \$35.00—Z. Gross, \$50.00—Dick McGinn, \$96.43.

Film Rental: Pathe Film 50%, \$152.56—United Artists 50%, \$223.59—Famous Players Lasky 50%, \$251.56—Fox Film 50%, \$353.27—Educational Film 50%, \$51.25.

Film Frt: Jacks Transfer, \$7.00—Alaska S. S. Co., \$46.00—Aaa. S. S. Co., \$21.06—Pac. S. S. Co., \$34.40—Educational Film 50%, \$51.25.

General Expense: S. P. Johnson & Son, \$13.50—U. S. Signal Co., \$5.40.

Wages, Replacement & Repairs Preparatory to Sound Equip: None.

Adv: Western Poster, \$31.90.

Lights, Water, Tele: A. E. L. & P. Co., \$144.20—Juno Tele. Co., \$8.00.

Heat: Stand. Oil Co., \$36.28.

Ins. & Taxes: Taxes City 1/12, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$3061.56

Totals: Wages, \$341.43

Film Rental, \$1032.23

Film Frt., \$159.71

General Expense, \$18.90

Wages, Replacement & Repairs preparatory to Sound Equip., None

(Testimony of Charles M. Tuckett.)

Adv., \$31.90

Lights, Water, Tele., \$152.20

Heat, \$36.28

Ins. & Taxes, \$63.00

Rental, \$287.87—Total 2125.52

Net Profit.....\$ 936.04

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: Chas. Tuckett—Geo. Cortez—Dick McGinn. [407]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MAY, 1929.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—Dick McGinn, \$90.00—Geo. Cortez, \$60.00—L. Sinclair, \$35.00—Chas. Tuckett, \$100.00—Usher, \$3.50.

Film Rental: United Artists 50%, \$152.47—Fox Film 50%, \$539.17—Warner Bros., 50%, \$618.07—Educational Film 50%, \$64.25.

Film Frt: City Wharf, \$68.83—Jacks Transfer, \$11.75—Pacific S. S. Co., \$10.19—City Wharf, \$16.44—J. Gross Transfer, \$18.31.

General Expense: J. B. Burford Co., \$9.50—Empire Prntg Co., \$2.50—U. S. Signal Corps, \$27.35.

(Testimony of Charles M. Tuckett.)

Wages, Replacements & Repairs Preparatory to
Sound Equip: Capital Elec., \$13.54—Thomas
Hdwe., \$25.95—Juneau Lumber, \$14.71—Na-
tional Theater Supply Co., \$6.25.

Adv: Jerry Davis, \$5.65—Empire Printg. Co.,
\$63.65—Empire Printg. Co., \$60.35.

Lights, Water, Tele: A. E. L. & P. Co., \$113.65
—Juneau Water, \$14.00.

Heat: Cash Cole, \$19.00—Standard Oil, \$20.75.

Ins. Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$4506.40

Totals: Wages, \$338.50

Film Rental, \$973.96

Film Frt, \$125.52

General Expense, \$39.35

Wages, Replacements & Repairs preparatory to
Sound Equip., \$60.45—Adv. \$129.65

Lights, Water, Tele., \$127.65

Heat, \$39.75

Ins., Taxes, \$63.00

Rental, \$287.87—Totals 2185.70

Profit.....\$2320.70

The following names are also listed on said work
sheet, but no amount appears opposite them under
any place on said sheet, viz: Chas. Tuckett (2)—
Geo. Cortez—L. Lemmieux—Dick McGinn (2).

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JUNE, 1929.

Working sheet shows following items:

Wages: L. Sinclair, \$35.00—O. M. Lemmieux, \$75.00—Z. Gross., \$50.00—Dick McGinn, \$91.00.

Film Rental: Fox Film Corp., 50%, \$392.87—United Artists Corp., 50%, \$266.65—Pathe Film Exch., 50%, \$113.24—Educational Film 50%, \$23.37—Educational Film 50%, \$20.00—Warner Bros., 50%, \$293.96.

Film Freight: Pac. S. S. Co., \$15.50—Alaska S. S. Co., \$15.50—Pac. S. S. Co., \$15.50—Pac. S. S. Co., \$8.81—City Wharf, \$4.50.

General Expense: J. B. Burford, \$9.50—U. S. Signal Corps, \$13.50.

Replacements & Repairs: Thos. Hdwe. Co., \$4.60.

Adv: Empire Printg. Co., \$122.70—Douglas Hi School, \$5.00.

Lights, Water, Tele: A. E. L. & P. Co., \$179.29—Juneau Water Co., \$5.50.

Heat: Standard Oil Co., \$20.75—Cash Cole Transfer, \$6.50—Reliable Transfer, \$1.50—Union Oil Co., \$10.39—Standard Oil, \$20.79.

Ins. & Taxes: City of Juneau, \$10.00—City of Juneau, \$10.00—1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$4025.00

Totals: Wages, \$428.50
 Film Rental, \$1110.09
 Film Freight, \$59.81

(Testimony of Charles M. Tuckett.)

General Expense, \$23.00	
Replacement, Repairs, \$4.60	
Adv., \$127.70	
Lights, Water, Tele., \$184.79	
Heat, \$59.93—Ins. & Taxes, \$83.00	
Rental, \$287.87—Total	2369.29
	<hr/>
Net Profit	\$1655.71

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: O. M. Lemmieux—L. Lemmieux—Geo. Cortez—Dick McGinn. [409]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JULY, 1929.

Working sheet shows following items:

Wages: Geo. Cortez, \$70.00—Z. Gross, \$50.00—Dick McGinn, \$96.45—D. Sinclair, \$35.00—O. M. Lemmieux, \$75.00.

Film Rental: United Artists 50%, \$75.00—Educational Film 50%, \$91.25—Pathe Film 50%, \$101.57—B. M. Behrends Bank 50%, \$705.34—Vitaphone Corpn., 50%, \$437.01—Vitaphone Corpn., 50%, \$362.50—Vitaphone Corpn., 50%, \$82.50—Vitaphone Corpn., 50%, \$68.59.

Film Freight: J. Gross Transfer, \$69.82—City Wharf, \$14.42.

General Expense: None.

(Testimony of Charles M. Tuckett.)

Replacement & Repairs: First Nat. Bank, \$159.15

—National Theatre Supply, \$13.77.

Adv: Empire Printg. Co., \$77.40.

Lights, Water, Tele: Juno.-Doug. Tele. Co., \$5.25

—A. E. L. & P. Co., \$96.26—Juneau Water Co., \$2.84—Juneau Water Co., \$7.00.

Heat: Standard Oil Co., \$20.45—Cash Cole, \$7.50.

Ins. & Taxes: City of Juneau, \$22.32—City of Juneau, \$78.54—1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$6308.40

Totals: Wages, \$326.45

Film Rental, \$1923.76

Film Freight, \$84.24

General Expense, None

Replacement & Repairs, \$172.92

Adv., \$77.40

Lights, Water, Tele., \$111.35

Heat, \$27.95—Ins. & Taxes, \$163.86

Rental, \$287.87—Total 3175.80

Net Profit.....\$3132.60

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: L. C. Lemmieux—Geo. Cortez—Dick McGinn—O. M. Lemmieux. [410]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR AUGUST, 1929.

Working sheet shows following items:

Wages. J. Lemmieux, \$100.00—S. Sinclair, \$40.00—
Z. Gross, \$50.00—Dick McGinn, \$102.88—Geo.
Cortez, \$70.00—Geo. Cortez, \$17.25—O. M. Lem-
mieux, \$75.00—Geo. Cortez, \$10.00.

Film Rental: United Artists 50%, \$200.00—Fox
Film 50%, \$554.51—Vitaphone Corp'n. 50%,
\$189.95—Warner Bros. 50%, \$457.90—Fox
Film Corp'n. 50%, \$799.51—Warner Bros. 50%,
\$205.02—Pathe Film Exchange 50%, \$65.36—
Columbia Film Exch. 50%, \$14.04—Columbia
Film Exch. 50%, \$22.58—Columbia Film Exch.
50%, \$55.00—Educational Film Exch. 50%,
\$42.70.

Film Freight: Jacks Transfer, \$6.75—Gross Trans-
fer, \$7.97.

General Expense: Alaska Weekly, \$5.00.

Replacement & Repairs: D. E. Sheriff, \$5.00—
National Theatre Supply, \$8.10.

Adv: Empire Printg. Co., \$121.20.

Lights, Water, Tele: Juno Tele. Co., \$8.00—A. E.
L. & P. Co., \$135.35—Juno Water Co., \$2.00.

Heat: Stand. Oil Co., \$20.74—Union Oil Co. \$10.89
—North Transfer, \$2.00.

Ins. & Taxes: City of Juneau, Street Assessment
1/10, \$50.76—1/12 City Taxes. \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$5547.15

(Testimony of Charles M. Tuckett.)

Totals: Wages, \$505.13	
Film Rental, \$2606.57	
Film Freight, \$14.72	
General Expense, \$5.00	
Replacement & Repairs, \$13.10	
Adv., \$121.20	
Lights, Water, Tele., \$145.35	
Heat, \$33.63—Ins. & Taxes, \$113.76	
Rental, \$287.87—Total	3846.33
	<hr/>
Net Profit.....	\$1700.82

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: O. N. Lemmieux—Dick McGinn—L. C. Lemmieux. [411]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR SEPT. 1929.

Working sheet shows following items:

Wages: Dick McGinn, \$96.45—J. Gaualko, \$70.00—O. M. Lemmieux, \$187.50—O. M. Lemmieux, \$6.25—Mrs. Sinclair, \$45.00—Z. Gross, \$60.00—C. M. Tuckett, \$112.50.

Film Rental: Vitaphone Corpn. 50%, \$359.02—United Artists 50%, \$275.00—B. M. Behrend, draft film, 50%, \$401.17—Columbia Exchange 50%, \$13.45—Columbia Exchange 50%, \$55.00—Pathe Exchange 50%, \$25.00—Columbia Exchange 50%, \$85.85—Warner Bros. 50%,

(Testimony of Charles M. Tuckett.)

\$332.00—Educational Films 50%, \$40.00—Tiffany Stahl Prod., 50%, \$53.10—Pathe Exchange 50%, \$136.21—Vitaphone Corpn., 50%, \$362.90.

Film Freight: Jacks Transfer, \$18.75.

General Expense: Weldon Williams, Lick, \$17.00.

Replacement & Repairs: A. M. Geyer, \$2.11.

Adv: Empire Printg. Co., \$71.55.

Lights, Water, Tele: Juneau Water Co., \$4.00—A. E. L. & P. Co., \$118.60—Juno Tele. Co., \$10.00.

Heat: Standard Oil Co., \$20.45—Cole Transfer, \$7.50.

Ins. Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$5393.35

Totals: Wages, \$477.70

Film Rental, \$2138.70

Film Freight, \$18.75

General Expense, \$17.00

Replacement & Repairs, \$2.11

Adv., \$71.55

Lights, Water, Tele., \$132.60

Heat, \$27.95—Ins. Taxes, \$63.00

Rental, \$287.87—Total 3237.23

Net Profit.....\$2156.12

The following names are also listed on said work sheet, but no amount appears opposite them under any place on said sheet, viz: John Gaualko—O. M. Lemmieux—C. M. Tuckett—Dick McGinn. [412]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR OCT., 1929.

Working sheet shows following items:

Wages: Dick McGinn, \$96.45—John Gawalko, \$70.00—O. M. Lemmieux, \$87.50—O. M. Lemmieux, \$6.25—L. Sinclair, \$50.00—Z. Gross, \$60.00—Chas. Tucket, \$112.50.

Film Rental: Paramount 50%, \$1007.59—United Artists 50%, \$300.00—Columbia Film 50%, \$80.60—Tiffany Stahl 50%, \$10.00—Educational Film 50%, \$60.00—Paramount 50%, \$489.36—Fox Film Corpn., 50%, \$231.67.

Film Freight: J. Gross Transfer, \$51.32—Pac. S. S. Co., \$17.69—City Wharf, \$21.00.

General Expense: None.

Replacement, Repairs: Elec. Research Prod., \$16.27—National Theatre Supply, \$24.73.

Adv: Juneau Cold Storage, \$2.00—Empire Printg. Co., \$80.40—Alaska Fair Assn., \$5.00.

Lights, Water, Tele: A. E. L. & P. Co., \$200.25—Juneau Water, \$4.00—Juno Tele. Co., \$3.00.

Heat: North Transfer, \$2.50—Standard Oil Co., \$40.74.

Ins. Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$5501.71

Totals: Wages, \$482.70

Film Rental, \$2718.08

Film Freight, \$90.01

(Testimony of Charles M. Tuckett.)

General Expense, None	
Replacement, Repairs, \$41.00	
Adv., \$87.40	
Lights, Water, Tele., \$207.25	
Heat, \$43.24—Ins. Taxes, \$63.00	
Rental, \$287.87—Total	4020.55
	<hr/>
Net Profit.....	\$1481.16
	[413]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR NOV. 1929.

Working sheet shows following items:

Wages: Z. Gross, \$60.00—John Gawalko, \$70.00—
L. Sinclair, \$40.00—N. Lemmieux, \$87.50—Dick
McGinn, \$102.88—C. Tuckett, \$112.50—N. Lem-
mieux, \$6.25.

Film Rental: Warner Bros. 50%, \$132.50—Fox
Film 50%, \$442.79—Columbia Film 50%, \$95.00
Vitaphone Corpn. 50%, \$362.20—Warner Bros.
50%, \$305.87—Paramount Film 50%, \$358.69
—Pathe Film 50%, \$219.17.

Film Freight: City Wharf, \$21.94—Jacks Trans-
fer, \$9.75—Pac. S. S. Co., \$17.41.

General Expense: None.

Replacement, Repairs: Juno Young Hdwe., \$2.95—
National Theatre Supply, \$5.00—Thos. Hdwe.,
\$5.16—Electrical Research Prod., \$4.90.

(Testimony of Charles M. Tuckett.)

Adv: Empire Printg. Co., \$5.00—Empire Printg.

Co., \$91.90—Juno Cold Storage, \$2.00.

Lights, Water, Tele: Juno Water Co., \$4.00—

Juno Tele. Co., \$3.00—A. E. L. & P. Co., \$93.65.

Heat: Union Oil Co., \$40.68.

Ins., Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$6068.02

Totals: Wages, \$479.13

Film Rental, \$1916.22

Film Freight, \$49.10

General Expense, None

Replacement, Repairs, \$18.01

Adv., \$98.90

Lights, Water, Tele., \$100.65

Heat, \$40.68—Ins. Taxes, \$63.00

Rental, \$287.87—Total 3053.56

Net Profit.....\$3014.46

[414]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR DEC. 1929.

Working sheet shows following items:

Wages: John Gawalko, \$70.00—J. Gross, \$60.00—

D. McGinn, \$96.45—Ned Lemnieux, \$93.75—L.

Sinclair, \$45.00—Chas. Tuckett, \$112.50.

Film Rental: Educational Film 50%, \$84.35—Fa-

mous Lasky 50%, \$1092.40—Columbia Film

(Testimony of Charles M. Tuckett.)

50%, \$72.02—Pathe Film Exch. 50%, \$259.86—
Fox Film 50%, \$366.60—Vitaphone Corpn 50%,
\$248.75—Tiffany Stahl 50%, \$8.10.

Film Freight: J. Gross Transfer, \$79.12—Pac. S.
S. Co., \$9.96.

General Expense: Film Daily, \$10.00—Empire
Printg Co., \$6.50—Chas. Tuckett, \$25.00—Neil
Lemieux, \$25.00—Dick McGinn, \$10.00—
John Gawalko, \$10.00—L. Sinclair, \$10.00.

Replacement, Repairs: Juno Young Hdwe., \$13.10
Thos. Hdwe., \$7.16—Elec. Research Prod.
\$68.42—O. Jensen, \$35.72.

Adv: Empire Printing Co., \$85.70—Juno Cold
Storage, \$2.00.

Lights, Water, Tele: Juno Water Co., \$4.00—A. E.
L. & P. Co., \$131.97—Juno Tele. Co., \$3.00.

Heat: Union Oil, \$40.50.

Ins., Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$287.87.

Gross Receipts:\$4985.99

Totals: Wages, \$477.70

Film Rental, \$2132.08

Film Freight, \$89.08

General Expense, \$96.50

Replacement, Repairs, \$124.40

Adv., \$87.70

Lights, Water, Tele., \$138.97

Heat, \$40.50—Ins., Taxes, \$63.00

Rental, \$287.87—Total 3537.45

Net Profit.....\$1448.54

(Testimony of Charles M. Tuckett.)

Witness Tuckett read to the jury the first page of defendant's Exhibit K-1 and testified that the items of expense shown on the work sheets attached thereto were taken from the books offered in evidence; that those books contained other items besides these, that it is just the same as these books; that he knows of his own personal knowledge what items belong to the Juneau Coliseum theatre; that he figured from the total items in the books those items only in making up these statements; that he knows from his own personal knowledge that those were the only items that belonged to the Juneau Coliseum theatre for 1929, and that that goes for all other statements that he had prepared that are to be offered in evidence. [415]

(Testimony of Charles M. Tuckett.)

EXHIBIT No. K-2

PROFIT AND LOSS STATEMENT

1930

COLISEUM THEATRE

Juneau, Alaska

	Total Receipts	Total Expenses	Net Profits	Net Loss
January	\$ 4,633.35	\$ 3,696.66	\$ 936.69	
February	3,757.91	3,481.83	276.08	
March	3,674.55	2,416.69	1,257.86	
April	4,991.35	1,890.57	3,100.78	
May	4,324.10	4,032.82	291.28	
June	4,219.28	2,885.59	1,333.69	
July	4,295.50	3,410.02	885.48	
August	4,458.06	2,324.46	2,133.60	
September	4,955.15	2,065.30	2,889.85	
October	4,861.79	3,051.47	1,810.32	
November	3,907.90	3,002.30	905.60	
December	5,517.55	3,168.19	2,349.36	
	<hr/>	<hr/>	<hr/>	<hr/>
	\$53,596.49	\$35,425.90	\$18,170.59	
	35,425.90			
Proof	<hr/>			
	\$18,170.59			

Memorandum:

Net Profit for year 1930	\$18,170.59
((Less) Depreciation taken for 1930	7,000.00
	<hr/>
Net Profit for year 1930	\$11,170.59

[416]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JANUARY, 1930.

Working sheet shows following items:

Wages: N. Lemmieux, \$93.75—Dick McGinn, \$102.88—John Gawalko, \$70.00—Chas. Tuckett, \$112.50—L. Sinclair, \$45.00—Z. Gross, \$60.00.

Film Rental: Tiffany Stahl 50%, \$55.00—Pathe Film Exchange 50%, \$300.50—Tiffany Stahl 50%, \$38.10—Warner Bros. 50%, \$311.20—Educational Film 50%, \$30.00.

Film Freight: City Wharf, \$20.15—Jacks Transfer, \$7.25.

General Expense: Electrical Research, \$301.10; J. C. Hayes Shop, \$3.15; Electrical Research Prod. 50%, \$3.42; Do, 50%, \$171.00; Do, 50%, \$509.50; Do, 50%, \$480.30.

Replacements and Repairs: Thomas Hdwe., \$12.63—National Theater Supply, \$38.93.

Advertising: Empire Printing Co., \$125.35; Western Poster Co., \$5.81; Juno Cold Storage, \$2.00.

Lights, Water, Tele: A. E. L. & P. Co., \$189.49; Juno Water Co., \$4.00; Juneau Tele., \$3.00.

Heat: Union Oil Co., \$41.78.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,633.35

Totals: Wages, \$484.13

Film Rental, \$734.80

Film Freight, \$27.40

General Expense, \$1,468.47

(Testimony of Charles M. Tuckett.)

Replacements and Repairs, \$51.56

Advertising, \$133.16

Lights, Water, Tele., \$196.49

Heat, \$41.78

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 3,696.66

 Net Profit.....\$ 936.69

[417]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR FEBRUARY, 1930.

Working sheet shows following items:

Wages: Z. Gross, \$35.00—John Gawalko, \$75.00—
Ned Lemmieux, \$100.00—L. Sinclair, \$45.00—
Chas. Tuckett, \$125.00.

Film Rental: Mickey Carney, \$25.00—Paramount
Films 50%, \$712.16—Fox Film Co. 50%, \$151.87
Vitaphone Corpn. 50%, \$510.00—Educational
Films 50%, \$61.57—Vitaphone Corpn. 50%,
\$325.45—Famous Players Lasky 50%, \$318.59
—Warner Bros. 50%, \$134.80—Pathe Exchange
50%, \$149.44.

Film Freight: Pacific S. S. Co., \$25.75—J. Gross
Transfer Co., \$41.15.

General Expense: Harrison Reports, \$16.00—
Hawkwooch Chemical Co., \$17.50.

Replacements and Repairs: None.

Advertising: Alaska Empire, \$99.35.

(Testimony of Charles M. Tuckett.)

Lights, Water, Tele: Juneau Water Co., \$4.00—

A. E. L. & P. Co., \$136.70—Juno Tele Co., \$3.00.

Heat: Union Oil Co., \$40.78—Worth Transfer,
\$12.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$3,757.91

Totals: Wages, \$380.00

Film Rental, \$2,388.98

Film Freight, \$66.90

General Expense, \$33.50

Advertising, \$99.35

Lights, Water, Tele., \$143.70

Heat, \$53.53

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 3,481.83

Net Profit.....\$ 276.08

[418]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MARCH, 1930.

Working sheet shows following items:

Wages: Mickey Carney, \$25.00—Ned Lemmieux,
\$100.00—B. W. Burke, \$50.00—Z. Gross, \$35.00
—L. Sinclair, \$45.00—C. Tuckett, \$125.00—J.
Gaualko, \$75.00.

Film Rental: Pathe Exchange 50%, \$183.97—Tif-
fany Stahl 50%, \$42.94—Paramount Exchange
50%, \$651.41—Educational Film 50%, \$31.57—

(Testimony of Charles M. Tuckett.)

Warner Bros. 50%, \$82.50—Vitaphone Corpn.
50%, \$374.42.

Film Freight: Pac. S. S. Co., \$15.26.

General Expense: A. M. Simpkins, \$2.55.

Replacements and Repairs: Juno Young, \$10.10.

Advertising: Empire Printg., \$93.45.

Lights, Water, Tele.: Juno Water, \$4.00—A. E. L.
& P. Co., \$130.30—Juno Tele., \$3.00.

Heat: Union Oil, \$20.35.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$3,674.55

Totals: Wages, \$455.00

Film Rental, \$1,366.81

Film Freight, \$15.26

General Expense, \$2.55

Replacements and Repairs, \$10.10

Advertising, \$93.45

Light, Water, Tele., \$137.30

Heat, \$20.35

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 2,416.69

Net Profit.....\$1,257.86

[419]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR APRIL, 1930.

Working sheet shows following items:

Wages: Ned Lemmieux, \$100.00—B. W. Burke, \$75.00—Z. Gross, \$35.00—L. Sinclair, \$45.00—J. Gawalko, \$75.00—Chas. Tuckett, \$125.00—Alaska S. S. Co., \$21.25—Mickey Carney, \$25.00.

Film Rental: Fox Film Corpn. 50%, \$585.33—Educational Film 50%, \$29.60—Pathe Film 50%, \$123.42.

Film Freight: Jack's Transfer, \$12.00.

General Expense: None.

Replacements and Repairs: Elec. Research Prod., \$31.00.

Advertising: Juno Empire, \$115.95.

Lights, Water, Tele.: A. E. L. & P. Co., \$128.40—Juno Water, \$4.00—Juneau Telephone, \$3.00.

Heat: Union Oil, \$40.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,991.35

Totals: Wages, \$501.25

Film Rental, \$738.35

Film Freight, \$12.00

Replacements and Repairs, \$31.00

Advertising, \$115.95

Light, Water, Tele., \$135.40

Heat, \$40.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 1,890.57

Net Profit.....\$3,100.78

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MAY, 1930.

Working sheet shows following items:

Wages: John Gaualko, \$70.00—Z. Gross, \$35.00—
Ned Lemmieux, \$100.00—L. Sinclair, \$45.00—
Mariel Jarman, \$25.00—Chas. Tuckett, \$125.00.

Film Rental: First National Films 50%, \$308.15—
Vitaphone Corpn 50%, \$422.50—Warner Bros.
Films 50%, \$757.27—Fox Film 50%, \$582.03—
Pathe Film 50%, \$68.75—Tiffany Exchange
50%, \$67.95—Educational Film 50%. \$51.57—
Vitaphone Corpn. 50%, \$867.58.

Film Freight: Alaska S. S. Co., \$10.00.

General Expense: None.

Replacements and Repairs: None.

Advertising: None.

Lights, Water, Tele.: A. E. L. & P. Co., \$177.15—
Juneau Telephone, \$4.00.

Heat: None.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,324.10

Totals: Wages, \$400.00

Film Rental, \$3,125.80

Lights, Water, Tele., \$181.15

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 4,032.82

 Net Profit.....\$ 291.28

[421]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JUNE, 1930.

Working sheet shows following items:

Wages: Z. Gross, \$35.00—L. Sinclair, \$45.00—M. Jarman, \$25.00—Ned Lemmieux, \$100.00—B. W. Burke, \$75.00—J. Gaualko, \$50.00—E. B. Clayton, \$75.00—Chas. Tuckett, \$125.00—Mrs. Davis, \$30.00.

Film Rental: Vitaphone Corpn. 50%, \$579.00—Warner Bros. 50%, \$373.47—1st National Film 50%, \$170.50—Pathe Exchange 50%, \$190.22—Educational Film 50%, \$42.50.

Film Freight: Aaa. S. S. Co., \$23.21—Jack's Transfer, \$10.05.

General Expense: Pac. Coast Stamp Wks., \$1.90—Film Daily, \$10.00.

Replacement and Repairs: National Theater Supply, \$15.57.

Advertising: Alaska Empire, \$311.05—Chamber of Commerce, \$50.00—Western Poster, \$30.60.

Lights, Water, Tele.: Juno Water Works, \$8.00—A. E. L. & P. Co., \$149.90—Juno Tele., \$3.00.

Heat: Union Oil Co., \$40.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,219.28

Totals: Wages, \$560.00

Film Rental, \$1,355.69

Film Freight, \$33.26

General Expense, \$11.90

(Testimony of Charles M. Tuckett.)

Replacement and repairs, \$15.57

Advertising, \$391.65

Lights, Water, Tele., \$160.90

Heat, \$40.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 2,885.59

Net Profit.....\$1,333.69

[422]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JULY, 1930.

Working sheet shows following items:

Wages: John Gawalko, \$80.00—Z. Gross, \$50.00—
L. Sinclair, \$45.00—M. Jarman, \$25.00—B. W.
Burke, \$87.50—D. Sinclair, \$62.50—Chas.
Tuckett, \$125.00.

Film Rental: Tiffany Stahl 50%, \$72.78—Fox
Film 50%, \$454.50—Vitaphone Corpn. 50%,
\$100.00—Paramount Film 50%, \$1,045.81—
Pathe Film 50%, \$152.04—Paramount Film
50%, \$500.00—Educational Film 50%. \$45.88.

Film Freight: City Wharf, \$21.87—Jack's Trans-
fer, \$3.50—J. Gross Transfer, \$40.49.

General Expense: None.

Replacements and Repairs: None.

Advertising: Empire Printg., \$17.53—Juno Cold
Storage, \$2.00.

(Testimony of Charles M. Tuckett.)

Lights, Water, Tele.: Juno Water, \$4.00—A. E. L. & P. Co., \$135.00—Juno Tele., \$3.00.

Heat: Union Oil, \$20.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,295.50

Totals: Wages, \$475.00

Film Rental, \$2,371.01

Film Freight, \$65.86

Advertising, \$19.53

Lights, Water, Tele., \$142.00

Heat, \$20.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 3,410.02

Net Profit.....\$ 885.48

[423]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR AUGUST, 1930.

Working sheet shows following items:

Wages: Duncan Sinclair, \$62.50—Z. Gross, \$50.00—L. Sinclair, \$45.00—John Gawalko, \$78.00—M. Jarman, \$25.00—Chas. Tuckett, \$125.00.

Film Rental: Educational Films 50%, \$106.00—Fox Films 50%, \$452.38—Pathe Films 50%, \$173.15—Vitaphone Corpn. 50%, \$120.95—Warner Bros. 50%, \$185.75—Vitaphone Corpn. 50%, \$266.00.

(Testimony of Charles M. Tuckett.)

Film Freight: Alaska S. S. Co., \$31.75—Jack's
Transfer, \$4.75—J. Gross Transfer, \$16.08.

General Expense: None.

Replacements & Repairs: None.

Advertising: Empire Printing, \$140.60.

Lights, Water, Tele.: A. E. L. & P. Co., \$97.93—
Juneau Water Co., \$4.00—Juneau Telephone,
\$3.00.

Heat: Union Oil, \$20.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,458.06

Totals: Wages, \$385.50

Film Rental, \$1,304.23

Film Freight, \$52.58

Advertising, \$140.60

Lights, Water, Tele., \$104.93

Heat, \$20.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 2,324.46

Net Profit.....\$2,133.60

[424]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR SEPTEMBER, 1930.

Working sheet shows following items:

Wages: John Gaualko, \$70.00—Duncan Sinclair, \$62.50—B. W. Burke, \$87.50—Z. Gross, \$50.00—Chas. Tuckett, \$125.00—L. Sinclair, \$45.00—June Geyer, \$25.00—Mrs. Davis, \$16.00—Mickey Carney, \$25.00.

Film Rental: Fox Film 50%, \$190.77—Paramount Film 50%, \$507.78—Vitaphone Film 50%, \$311.36.

Film Freight: Jack's Transfer, \$5.00—J. Gross, \$21.92.

General Expense: Geo. Simpkins, \$6.00.

Replacements & Repairs: None.

Advertising: Empire Printg., \$94.95—Juno Cold Storage, \$2.00.

Lights, Water, Tele.: Juno Water, \$4.00—A. E. L. & P. Co., \$75.90—Juno Telephone, \$3.00.

Heat: Union Oil Co., \$20.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,955.15

Totals: Wages, \$506.00

Film Rental, \$1,009.91

Film Freight, \$26.92

General Expense, \$6.00

Advertising, \$96.95

Lights, Water, Tele., \$82.90

Heat, \$20.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 2,065.30

Net Profit.....\$2,889.85

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR OCTOBER, 1930.

Working sheet shows following items:

Wages: Duncan Sinclair, \$75.00—Z. Gross, \$50.00
—B. W. Burke, \$87.50—J. Gawalko, \$80.00—L.
Sinclair, \$45.00—June Geyer, \$25.00—Chas.
Tuckett, \$125.00.

Film Rental: Paramount Pictures 50%, \$1,277.84
—Pathe Film 50%, \$356.04—Educational Film
50%, \$78.00—Fox Film 50%, \$108.58—Vita-
phone Corpn, \$384.88—Paramount Films 50%,
\$868.92—Educational Films 50%, \$59.75.

Film Freight: City Wharf, \$17.54.

General Expense: None.

Replacements and Repairs: Electrical Products,
\$7.00.

Advertising: Juno Pub. Schools, \$8.50—Empire
Printg. \$66.10.

Lights, Water, Tele.: Juno Telephone, \$3.00—Juno
Water, \$4.00—A. E. L. & P. Co., \$117.20.

Heat: Union Oil, \$40.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$4,861.79

Totals: Wages, \$487.50

Film Rental, \$1,984.01

Film Freight, \$17.54

Replacement & Repairs, \$7.00

Advertising, \$74.60

Lights, Water, Tele., \$124.20

(Testimony of Charles M. Tuckett.)

Heat, \$40.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 3,051.47

 Net Profit.....\$1,810.32

[426]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR NOVEMBER, 1930.

Working sheet shows following items:

Wages. Duncan Sinclair, \$75.00—Z. Gross, \$50.00

B. W. Burke, \$87.50—J. Gaualko, \$80.00—L.

Sinclair, \$45.00—Chas. Tuckett, \$125.00.

Film Rental: Fox Film Co. 50%, \$398.15—Pathe
Films, 50%, \$193.33—Paramount Films 50%,
\$708.91.Film Freight: Jack's Transfer, \$6.00—Pacific S.
S. Co., \$15.55—Northland Transp. Co., \$2.10.

General Expense: None.

Replacements & Repairs: Electrical Research
Prod., \$500.00.Advertising: Empire Printg., \$52.05—Western
Poster, \$14.60.Lights, Water, Tele.: Juno Water, \$4.00—Juno
Telephone, \$3.00—A. E. L. & P. Co., \$291.49.

Heat: Union Oil, \$40.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$3,907.90

(Testimony of Charles M. Tuckett.)

Totals: Wages, \$462.50	
Film Rental, \$1,300.39	
Film Freight, \$23.65	
Replacements and repairs, \$500.00	
Advertising, \$66.65	
Lights, Water, Tele., \$298.49	
Heat, \$40.75	
Insurance & Taxes, \$63.00	
Rental, \$252.87—Total	3,002.30
	<hr/>
Net Profit.....	\$ 905.60
	[427]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR DECEMBER, 1930.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—D. Sinclair, \$75.00—B. W. Burke, \$87.50—J. Gauwako, \$85.00—L. Sinclair, \$45.00—Chas. Tuckett, \$125.00—B. W. Burke, \$10.00—D. Sinclair, \$10.00—J. Gawalko, \$10.00—L. Sinclair, \$5.00—Grace, \$5.00—Chas. Tuckett, \$10.00.

Film Rental: Fox Film 50%, \$80.33—Vitaphone Corpn. 50%, \$535.60—Pathe Film Co. 50%, \$55.50—Paramount Publix 50%, \$522.35—Fox Film Co., 50%, \$546.99—Pathe Film 50%, \$208.55.

Film Freight: J. Gross Transfer, \$41.87—City Wharf, \$25.24.

General Expense: Geo. Simpkins, \$8.50—Zellerbach Paper Co., \$54.95.

(Testimony of Charles M. Tuckett.)

Replacements & Repairs: None.

Advertising: Empire, \$71.20.

Lights, Water, Tele.: Juno Water, \$4.00—A. E. L. & P. Co., \$135.99—Juno Telephone, \$3.00.

Heat: Union Oil Co., \$40.75.

Insurance & Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$252.87.

Gross Receipts:\$5,517.55

Totals: Wages, \$517.50

Film Rental, \$1,949.32

Film Freight, \$67.11

General Expense, \$63.45

Advertising, \$71.20

Lights, Water, Tele., \$142.99

Heat, \$40.75

Insurance & Taxes, \$63.00

Rental, \$252.87—Total 3,168.19

Net Profit.....\$2,349.36

Witness Tuckett testified that defendant's Exhibit K-2 were work sheets and summary of the Coliseum theatre for 1930, and was in all respects similar to the one he had just testified to, prepared in the same manner, covers the same subject, that the allocations in it are made in the same way as to the labor and other things, and contains only those items in the books referring to the Coliseum theatre and omits items which don't refer to the Coliseum theatre, and he read to the jury the first page of that exhibit. [428]

(Testimony of Charles M. Tuckett.)

EXHIBIT No. K-3

PROFIT AND LOSS STATEMENT

1931

COLISEUM THEATRE

Juneau, Alaska

	Total Receipts	Total Expenses	Net Profits	Net Loss
January	\$ 3,347.41	\$ 3,206.23	\$ 141.18	
February	3,078.68	4,498.26		\$ 1,419.58
March	3,059.95	2,902.00	157.95	
April	3,042.83	3,295.86		253.03
May	2,797.23	2,993.10		195.87
June	2,656.35	3,313.47		657.12
July	2,813.72	3,573.50		759.78
August	3,151.50	2,820.22	331.28	
September	2,765.06	3,095.88		330.82
October	2,828.10	1,244.83	1,583.27	
November	2,873.25	3,305.11		431.86
December	2,458.74	3,684.55		1,225.81
	<u>\$34,872.82</u>	<u>\$37,933.01</u>	<u>\$ 2,213.68</u>	<u>\$ 5,273.87</u>
		34,872.82		2,213.68
Proof		<u>3,060.19</u>		<u>3,060.19</u>

Memorandum:

Net Loss for year 1931	\$ 3,060.19
(Plus) Depreciation for year 1931	6,500.00
Net Loss for year 1931	<u>\$ 9,560.19</u>

(Loss)

[429]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JANUARY, 1931.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—J. Gaualko, \$85.00—L. Sinclair, \$45.00—D. Sinclair, \$75.00—B. W. Burke, \$87.50—Chas. Tuckett, \$125.00—Grace Meggett, \$25.00.

Film Rental: Vitaphone Corp'n 50%, \$122.48—Fox Film 50%, \$283.75—Tiffany Productions 50%, \$19.20—Tiffany Productions 50%, \$209.00—Paramount Publics 50%, \$765.46—Warner Bros. 50%, \$500.00—Pathe Exchange 50%, \$125.38.

Film Frt: O. B. Femmer, \$4.33—Jacks Transfer, \$7.00—J. Gross Transfer, \$26.85.

General Expense: Geo. M. Simpkins, \$2.00—Harrison Reports, \$16.00.

Replacement: Elec. Research Prod., \$10.20.

Adv: Juno Cold Storage, \$6.00—Empire Printing Co., \$95.05—Western Poster Co., \$18.90.

Lights, Water, Tele: A. E. L. & P. Co., \$156.00—Juno Water Co., \$4.00—Telephone, \$3.00.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental; Rental all 6%, \$235.38.

Gross Receipts:\$3,347.41

Totals: Wages, \$492.50

Film Rental, \$2,025.27

Film Frt., \$38.18

General Expense, \$18.00

(Testimony of Charles M. Tuckett.)

Replacement, \$10.20—Adv., \$119.95

Lights, Water, Tele., \$163.00

Heat., \$40.75—Ins. & Taxes, \$63.00

Rental, \$235.38 —Total 3,206.23

 Net Profit.....\$ 141.18

[430]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR FEBRUARY, 1931.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—L. Sinclair, \$45.00—D. Sinclair, \$75.00—B. W. Burke, \$40.00—J. Gaultko, \$35.00—Chas. Tuckett, \$125.00—Grace Meggett, \$25.00.

Film Rental: Fox Film 50%, \$426.67—Warner Film 50%, \$500.00—Pathe Film Exchange 50%, \$111.50—Warner Bros. 50%, \$500.00—Educational Film Co. 50%, \$61.45—Paramount Publics 50%, \$695.96—Warner Bros. 50%, \$569.40—Tiffany Stahl Prod. 50%, \$95.78—Universal Films 50%, \$142.67.

Film Frt: J. Gross Transfer, \$21.08—D. B. Femmer, \$11.20—Pacific S. S. Co., \$9.77.

General Expense: Allied Amusements, \$14.90—Seattle Rubber Stamp Co., \$11.80.

Replacement: Capital Electric, \$12.50.

(Testimony of Charles M. Tuckett.)

Adv: Empire Printing Co., \$72.50—Strollers Weekly, \$7.50—Pioneer Printing Co., \$105.00—Fireman's Club, \$10.00—Empire Printing Co., \$207.20.

Lights, Water, Tele: Juno Water Co., \$4.00—A. E. L. & P. Co., \$173.45.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$3,078.68

Totals: Wages, \$395.00

Film Rental, \$3,103.23

Film Frt., \$42.05

General Expense, \$26.70

Replacement, \$12.50—Adv., \$402.20

Light, Water, Tele., \$177.45

Heat, \$40.75—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 4,498.26

Net Loss.....\$1,419.58

[431]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MARCH, 1931.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—D. Sinclair, \$75.00—B. W. Burke, \$87.50—Lyda Sinclair, \$45.00—G. Cortez, \$62.50—Chas. Tuckett, \$125.00—Grace Meggett, \$25.00.

Film Rental: Fox Films, \$426.19—Paramount Films, \$575.12—Warner Bros., \$513.31—Pathe Exchange, \$236.10—Educational Films, \$61.55.

Film Frt: City Wharf, \$48.46.

General Expense: Anderson Music Co., \$10.00.

Replacement: None.

Adv: None.

Lights, Water, Tele: A. E. L. & P. Co., \$175.94—Juno Tele. Co., \$3.00.

Heat: None.

Ins. & Taxes: Internal Revenue 75%, \$83.95—City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$3,059.95

Totals: Wages, \$470.00

Film Rental, \$1,812.27

Film Frt., \$48.46

General Expense, \$10.00

Replacement, None—Adv., None

Lights, Water, Tele., \$178.94

Heat, None—Ins. & Taxes, \$146.95

Rental, \$235.38—Total 2,902.00

Net Profit.....\$ 157.95

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR APRIL, 1931.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—D. Sinclair, \$75.00—B. W. Burke, \$87.50—L. Sinclair, \$45.00—G. Cortez, \$62.50—Chas. Tuckett, \$125.00—Grace Meggett, \$25.00—E. B. Clayton, \$75.00.

Film Rental: Tiffany Productions 50%, \$70.75—Warner Bros. 50%, \$448.29—Pathe Exchange 50%, \$107.55—Paramount Films 50%, \$686.66—Fox Films 50%, \$437.60.

Film Frt: J. Gross Transfer, \$27.75—O. B. Femmer, \$18.18—Aaa. S. S. Co., \$13.50.

General Expense: None.

Replacement: None.

Adv: Empire Printing Co., \$152.55—Empire Printing Co., \$166.95—Juno Cold Storage, \$6.00—Western Poster, \$13.65—Strollers Weekly, \$22.50.

Lights, Water, Tele: Juno Water Co., \$8.00—A. E. L. & P. Co., \$147.85.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: Internal Revenue 75%, \$83.95—City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$3,042.83

Totals: Wages, \$545.00

Film Rental, \$1,750.85

Film Frt., \$59.43

General Expense, None	
Replacement, None—Adv., \$361.65	
Lights, Water, Tele., \$155.85	
Heat, \$40.75—Ins. & Taxes, \$146.95	
Rental, \$235.38—Total	\$3,295.86
	<hr/>
Net Loss.....	\$ 253.03
	[433]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MAY, 1931.

Working sheet shows following items:

Wages: Chas. Tuckett, \$125.00—Alvin Rafell, \$10.00—L. Sinclair, \$45.00—D. Sinclair, \$75.00—Z. Gross, \$50.00—Grace Meggett, \$25.00—E. B. Clayton, \$75.00—Viola Maki, \$12.00—Ned Lemmieux, \$42.00.

Film Rental: Fox Films 50%, \$537.11—Educational Films 50%, \$61.55—Tiffany Productions 50%, \$95.25—Pathe Films 50%, \$145.38—Warner Bros. 50%, \$660.85.

Film Frt: J. Gross Transfer, \$12.13—City Wharf, \$16.55—Pacific S. S. Co., \$38.11.

General Expense: Hellenthal & Hellenthal, \$101.50—Hellenthal & Hellenthal, \$21.85—B. M. Behrends, \$8.15—B. M. Behrends Bank, \$4.90.

Replacement: A. M. Geyer, \$45.77—Thomas Hdwe. Co., \$2.20—G. M. Laboratories, \$72.00.

(Testimony of Charles M. Tuckett.)

Adv: Juno Cold Storage, \$2.00—A. E. L. & P. Co. (for broadcasting), \$6.50—Strollers Weekly, \$22.50—Strollers Weekly, \$7.50—Empire Printing Co., \$151.20.

Lights, Water, Tele: A. E. L. & P. Co., \$177.97—Juno Water, \$4.00.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,797.23

Totals: Wages, \$459.00

Film Rental, \$1,500.14

Film Frt., \$66.79

General Expense, \$136.40

Replacement, \$119.97—Adv., \$189.70

Lights, Water, Tele., \$181.97

Heat, \$40.75—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 2,993.10

Net Loss.....\$ 195.87

[434]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JUNE, 1931.

Working sheet shows following items:

Wages: L. Sinclair, \$33.00—E. B. Clayton, \$75.00
—Z. Gross, \$50.00—D. Sinclair, \$75.00—John
Gaualko, \$60.00.

Film Rental: Fox Film 50%, \$400.12—Educational
Films 50 %, \$65.00—Universal Films 50%,
\$146.30—Paramount Films 50%, \$677.97—War-
ner Bros. 50%, \$822.35—Paramount Films
50%, \$117.39—Pathe R. K. O. 50%, \$109.42.

Film Frt: None.

General Expense: None.

Replacement: Thos. Hdwe. Co., \$9.78—G. M. Lab-
oratories, \$72.00.

Adv: Empire Printing Co., \$166.95.

Lights, Water, Tele: A. E. L. & P. Co., \$110.46—
Juno Water, \$4.00.

Heat: Union Oil Co., \$20.35.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,656.35

Totals: Wages, \$293.00

Film Rental, \$2,338.55

Film Frt., None

General Expense, None.

Replacement, \$81.78—Adv. \$166.95

Lights, Water, Tele., \$114.46

Heat, \$20.35—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 3,313.47

Net Loss.....\$ 657.12

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JULY, 1931.

Working sheet shows following items:

Wages: John Gaualko, \$9.00—E. B. Clayton, \$75.00—D. Sinclair, \$75.00—Z. Gross, \$50.00—L. Sinclair, \$49.00.

Film Rental: Fox Film Co. 50%, \$528.34—Paramount 50%, \$642.20—Tiffany Films 50%, \$90.75—Educational Films 50%, \$72.62—Warner Bros. 50%, \$659.00—Tiffany Films 50%, \$54.76—Pathe Films 50%, \$242.95.

Film Frt: City Wharf, \$37.64—Gross Transfer, \$11.50—Gross Transfer, \$25.20—Jack's Transfer, \$6.50—D. B. Femmer, \$4.73.

General Expense: None.

Replacement: Thomas Hdwe., \$9.78—C. C. Farmer, \$100.00.

Adv: Empire Printing Co., \$143.85—Empire Printing Co., \$132.15—Strollers Weekly, \$30.00 Chamber of Commerce, \$25.00—Harrison Reports, \$10.00—Empire Printing Co., \$2.00—Juno Hi School, \$8.50—Juno Cold Storage, \$4.00.

Lights, Water, Tele: A. E. L. & P. Co., \$127.95—Juno Tele. Co., \$3.00—Juno Water, \$4.00.

Heat: Union Oil Co., \$20.35—Union Oil Co., \$20.35.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,813.72

Totals: Wages, \$258.00

Film Rental, \$2,290.62

(Testimony of Charles M. Tuckett.)

Film Frt., \$85.57

General Expense, None

Replacement, \$109.78—Adv., \$355.50

Lights, Water, Tele., \$134.95

Heat, \$40.70—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 3,573.50

Net Loss.....\$ 759.78

[436]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR AUGUST, 1931.

Working sheet shows following items:

Wages.: E. B. Clayton, \$75.00—D. Sinclair, \$75.00
 —Z. Gross, \$50.00—Lyda Sinclair, \$45.00—C.
 Larson, \$20.00—John Gaualko, \$50.00.

Film Rental: Fox Films 50%, \$317.99—Warner
 Bros., 50%, \$607.32—Paramount Films 50%,
 \$522.38—Tiffany Pictures 50%, \$91.40—Educa-
 tional Pictures 50%, \$69.90—Pathe Films 50%,
 \$257.70.

Film Frt: Pacific S. S. Co., \$13.74—Aaa. S. S. Co.,
 \$7.75.

General Expense: R. E. Robertson, \$5.00.

Replacement: None.

Adv: Empire Printing Co., \$195.30—Juno Cold
 Storage, \$2.00—Strollers Weekly, \$9.00.

Lights, Water & Tele: A. E. L. & P. Co., \$96.75—
 Juno Water Co., \$4.00.

Heat: Union Oil Co., \$20.35.

(Testimony of Charles M. Tuckett.)

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$3,151.50

Totals: Wages, \$315.00

Film Rental, \$1,866.69

Film Frt., \$7.75 (Should be, \$21.49)

General Expense, \$5.00

Replacement, None—Adv., \$206.30

Lights, Water, Tele., \$100.75

Heat, \$20.35—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 2,820.22

Net Profit.....\$ 331.28

[437]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR SEPTEMBER, 1931.

Working sheet shows following items:

Wages: C. Larson, \$20.00—L. Sinclair, \$45.00—E. B. Clayton, \$75.00—Z. Gross, \$50.00—J. Gau-alko, \$50.00.

Film Rental: Universal Films 50%, \$138.50—Fox Films 50%, \$502.79—Warner Bros. 50%, \$620.87—Paramount Films 50%, \$644.99—Educational Films 50%, \$75.87—Tiffany Pictures 50%, \$89.60.

Film Frt: Aaa S. S. Co., \$27.64—J. Gross Transfer, \$22.00.

(Testimony of Charles M. Tuckett.)

General Expense: None.

Replacement: First Nat'l Bank (carbons), \$80.00
—National Theatre, \$73.87.

Adv: Strollers Weekly, \$6.00—Empire Printing,
\$143.90.

Lights, Water, Tele: A. E. L. & P. Co., \$100.12—
Juno Tele. Co., \$3.00—Juno Water Co., \$4.00—
Juno Water Co., \$4.00.

Heat: Union Oil Co., \$20.35.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,765.06

Totals: Wages, \$240.00

Film Rental, \$2,072.62

Film Frt., \$49.64

General Expense, None

Replacement, \$153.87—Adv., \$149.90

Lights, Water & Tele., \$111.12

Heat, \$20.35—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 3,095.88

Net Loss.....\$ 330.82

[438]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR OCTOBER, 1931.

Working sheet shows following items:

Wages: John Gaualko, \$50.00—E. B. Clayton, \$75.00—Z. Gross, \$50.00—Bess Millard, \$20.00—L. Sinclair, \$45.00.

Film Rental: Fox Films 50%, \$387.25.

Film Frt: Northland Transportation, \$6.80.

General Expense: None.

Replacement: Universal Sound Equipment, \$39.10.

Adv: Empire Printing, \$117.40—Strollers Weekly, \$6.00—Western Poster, \$2.70.

Lights, Water, Tele: Juno Tele. Co., \$3.00—A. E. L. & P. Co., \$114.85—Juno Water Co., \$4.00.

Heat: Union Oil Co., \$20.35.

Ins. & Taxes: City Clerk's Office, \$5.00—City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipt:\$2,828.10

Totals: Wages, \$240.00

Film Rental, \$387.25

Film Frt., \$6.80

General Expense, None

Replacement, \$39.10—Adv., \$126.10

Lights, Water, Tele., \$121.85

Heat, \$20.35—Ins. & Taxes, \$68.00

Rental, \$235.38—Total 1,244.83

Net Profit.....\$1,583.27

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR NOVEMBER, 1931.

Working sheet shows following items:

Wages: E. B. Clayton, \$75.00—J. Gaualko, \$50.00
 —Chas. Whyte, \$25.00—Bess Millard, \$20.00—
 L. Sinclair, \$45.00—Z. Gross, \$50.00.

Film Rental: Pathe Film 50%, \$170.40—Warner
 Bros. 50%, \$562.40—Pathe Film 50%, \$179.50
 —Tiffany Film 50%, \$159.65—Fox Film 50%,
 \$548.49—Paramount Pictures 50%, \$567.71—
 Paramount Pictures 50%, \$185.13.

Film Frt: None.

General Expense: Anderson Music Shop, \$5.00—
 U. S. Post Office (Envelopes), \$46.00—Clerk
 of Court, \$10.00.

Replacement: None.

Adv: Empire Printing Co., \$137.60—Strollers
 Weekly, \$22.00.

Lights, Water, Tele: Juno Water Co., \$4.00—
 Juno Tele. Co., \$3.00—City Light & Power,
 \$100.10.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,873.25

Totals: Wages, \$265.00

Film Rental, \$2,373.28

Film Frt., None

General Expense, \$61.00

Replacement, None—Adv. \$159.60

Lights, Water, Tele., \$107.10

Heat, \$40.75—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 3,305.11

Net Loss.....\$ 431.86

[440]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR DECEMBER, 1931.

Working sheet shows following items:

Wages: Z. Gross, \$50.00—D. Sinclair, \$75.00—J.

Gaualko, \$50.00—E. B. Clayton, \$75.00—Bess

Millard, \$20.00—L. Sinclair, \$45.00—Chas.

Whyte, \$25.00—Rex Parrott, \$33.00.

Film Rental: Educational Films 50%, \$148.60—

Warner Bros., 50%, \$559.47—Pathe Exchange

50%, \$307.62—Paramount Exchange 50%,

\$555.20—B. M. Behrends Bank 50%, \$10.63—

Fox Film 50%, \$974.24.

Film Frt: Gross Transfer, \$16.10—Pacific S. S.

Co., \$23.83.

General Expense: None.

Replacement: None.

Adv: Empire Printing Co., \$95.90—Hurley En-

graving Co., \$59.58—Strollers Weekly, \$34.00.

Lights, Water, Tele: Juno Tele. Co., \$3.00—A. E.

L. & P. Co., \$180.25—Juneau Water Co., \$4.00.

Heat: Union Oil Co., \$40.75.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$235.38.

Gross Receipts:\$2,458.74

Totals: Wages, \$373.00

Film Rental, \$2,555.76

Film Frt., \$39.93

General Expense, None

Replacement, None—Adv. \$189.48

Lights, Water, Tele., \$187.25

Heat. \$40.75—Ins. & Taxes, \$63.00

Rental, \$235.38—Total 3,684.55

Net Loss

\$1,225 81

(Testimony of Charles M. Tuckett.)

Witness Tuckett testified that defendant's Exhibit K-3 were work sheet and summaries for the Juneau Coliseum theatre for 1931, and in all respects similar to and prepared in the same manner and showing the same things as the one he had just testified to; that the expenses and income shown on the work sheet were arrived at in the same manner, depreciation taken the same way, capital investment calculated the same way, also carried as rent, and that he used that work throughout for that purpose, and he read the first page thereof to the jury, and that by sum total of monthly profit he meant the sum total of whatever monthly profits had been made in [441] that year and that net loss is the sum total of the monthly losses, that he subtracts the loss from the profit or the profit from the loss to find out which is greater; that he subtracted the total of the monthly profits from the total of the monthly losses which gave \$3,060.19, through loss before depreciation and \$9,560.19 net loss for that year after depreciation; that he depreciated the property 5% on buildings and that sort of thing; and 10% on machinery and furnishings; that the average life of equipment is ten years which is the reason he took 1/10th each year; that the average life of the other property is 20 years; that he took 5% throughout as the whole basis of his calculation for depreciation.

[442]

(Testimony of Charles M. Tuckett.)

EXHIBIT No. K-4

PROFIT AND LOSS STATEMENT

1932

COLISEUM THEATRE

Juneau, Alaska

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 2,257.17	\$ 2,797.16		\$ 539.99
February	2,468.16	3,112.69		644.53
March	2,075.55	2,780.51		704.96
April	2,228.26	1,913.53	\$ 314.73	
May	2,119.23	1,911.01	208.22	
June	2,337.95	713.94	1,624.01	
July	1,984.28	1,176.30	807.98	
August	2,431.46	2,395.35	36.11	
September	2,044.95	2,958.06		913.11
October	2,857.10	2,131.65	725.45	
November	2,244.60	2,317.42		72.82
December	2,330.75	1,608.44	722.31	
	<u>\$27,379.46</u>	<u>\$25,816.06</u>	<u>\$ 4,438.81</u>	<u>\$ 2,875.41</u>
	25,816.06		2,875.41	
Proof	\$ 1,563.40		\$ 1,563.40	

Memorandum:

Depreciation taken for year 1932\$ 6,700.00

Net Profit for year 1932 1,563.40

Net Loss for year 1932\$ 5,136.60

(Loss)

[443]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JAN. 1932.

Working sheet shows following items:

Wages: Rex Parrott, \$16.50—D. Sinclair, \$75.00—
Chas. Whyte, \$25.00—Bess Millard, \$20.00—L.
Sinclair, \$45.00—J. Gross, \$50.00—J. Gaualko,
\$50.00.

Film Rental: Paramount Films 50%, \$167.24—
RKO Pathe 50%, \$118.75—Paramount Films
50%, \$548.07—Fox Films 50%, \$417.68—War-
ner Bros. Films 50%, \$507.90.

Film Freight: Dave Flemmer, \$12.18—Gross
Transfer, \$20.42—Gross Transfer, \$18.20.

General Expense: Hayes Shop, \$5.00—John Dunn
(Court), \$8.10—Hansons Reports, \$12.00.

Replacement, Repairs: None.

Adv: Empire Printg. Co., \$84.70—First Nat. Bank
(dishes), \$55.64—Kanns Store (aprons) \$45.00.

Light. Water, Tele: A. E. L. & P. Co., \$182.20—
Juno Tele., \$3.00—Juno Water, \$4.00.

Heat: Union Oil, \$20.35—Standard Oil, \$20.35.

Insurance, Taxes: 1/12 city taxes, \$63.00.

Misc: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2257.17

Totals: Wages, \$281.50

Film Rental, \$1759.64

Film Freight, \$50.81

General Expenses, \$25.10

Replacement, Repairs, None

(Testimony of Charles M. Tuckett.)

Adv.,	\$185.34
Light, Water, Tele.,	\$189.20
Heat, \$40.70—Insurance, Taxes,	\$63.00
Misc., None—Rental,	\$201.87
Total	2797.16

Net Loss.....	\$ 539.99
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[444]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR FEB. 1932.

Working sheet shows following items:

Wages: D. Sinclair, \$75.00—J. Gaualko, \$50.00—
 J. Gross, \$50.00—Chas. Whyte, \$25.00—Bess
 Millard, \$20.00—L. Sinclair, \$45.00—Rex Par-
 rott, \$20.00—Bess Millard, \$10.00—B. F. Moe,
 \$100.00.

Film Rental: Universal Film 50%, \$171.95—Cos-
 mopolitan Film 50%, \$100.00—Educational
 Film 50%, \$80.00—Paramount Film 50%,
 \$506.56—Fox Film 50%, \$510.13—Warner
 Bros. Film 50%, \$568.32.

Film Freight: None.

General Expense: Jack Burford, \$20.00.

Replacement, Repairs: None.

Adv: First Nat. Bank (dishes), \$40.54—First Nat.
 Bank (dishes) \$95.05—Empire Printg., \$89.60
 —Strollers Weekly, \$16.90—Queen Anne Candy,
 \$21.00.

(Testimony of Charles M. Tuckett.)

Light, Water, Tele: A. E. L. & P. Co., \$184.85—

Juno Tele., \$3.00—Juneau Water, \$4.00.

Heat: Union Oil, \$20.35—Standard Oil, \$20.35.

Insurance, Taxes: 1/12 City Taxes, \$63.00

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2468.16

Totals: Wages, \$395.00

Film Rental, \$1937.18

Film Freight, None

General Expense, \$20.00

Replacement, Repairs, None

Adv., \$263.09

Light, Water, Tele., \$191.85

Heat, \$40.70—Insurance, Taxes, \$63.00

Miscel., None

Rental, \$201.87—Total 3112.69

 Net Loss.....\$ 644.53

[445]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MARCH, 1932.

Working sheet shows following items:

Wages: D. Sinclair, \$75.00—L. Sinclair, \$45.00—
J. Gaualko, \$45.00—J. Gross, \$45.00—Chas.
Whyte, \$25.00—Rex Parrott, \$20.00—Bess
Millard, \$10.00.

Film Rental: Fox Films 50%, \$259.59—Para-
mount 50%, \$512.67—Warner Bros., \$635.95—
Educational Films 50%, \$150.20—Pathe Films
50%, \$176.25—Educational Films 50%, \$26.25.

Film Freight: Pac. S. S. Co., \$8.00—City Wharf,
\$29.45—Pac. S. S. Co., \$12.82.

General Expense: None.

Replacement, Repairs: Thomas Hdwe., \$4.61.

Adv: Empire Printg. Co., \$105.75—Kanns Store
(aprons), \$76.80.

Light, Water, Tele: A. E. L. & P. Co., \$164.60—
Juno Tele., \$3.00—Juno Water, \$4.00.

Heat: Standard Oil, \$40.35—Union Oil, \$40.35.

Taxes: 1/12 City Taxes.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2075.55

Totals: Wages, \$265.00

Film Rental, \$1760.91

Film Freight, \$50.27

General Expense, None

Replacement, Repairs, \$4.61

Adv., \$182.55

(Testimony of Charles M. Tuckett.)

Light, Water, Tele., \$171.60

Heat, \$80.70—Insurance, Taxes, \$63.00

Miscel., None

Rental, \$201.87—Total 2780.51

 Net Loss.....\$ 704.96

[446]

Coliseum Theatre—Juneau
EXPENSE ACCOUNT FOR APRIL, 1932.

Working sheet shows following items:

Wages: Duncan Sinclair, \$75.00—L. Sinclair, \$45.00—J. Gaualko, \$50.00—Chas. Whyte, \$50.00—Edna Riendeau, \$12.00.

Film Rental: Paramount Pictures 50%, \$517.12—
Fox Film, \$360.10.

Film Freight: Aaa. S. S. Co., \$7.00—J. Gross
Transfer, \$26.90—City Dock, \$3.15.

General Expense: Hellenthall & Hellenthall, \$11.20
—First Nat. Bank (paper), \$27.50—U. S. Post
office (envelopes), \$12.52.

Replacement, Repairs: B. F. Shearer Co., \$18.09.

Adv: Empire Printg., \$7.70—Strollers Weekly,
\$47.30—Queen Anne Candy, \$21.00—Motion
Picture Herald, \$2.50—First Nat. Bank
(dishes), \$27.53—Queen Anne Candy, \$21.00—
Dohrman Hotel Supply (dishes), \$22.10.

Lights, Water, Tele: A. E. L. & P. Co., \$196.25—
Juno Tele., \$3.00—Juno Water, \$4.00.

(Testimony of Charles M. Tuckett.)

Heat: Standard Oil, \$40.35—Union Oil, \$40.35.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2228.26

Totals: Wages, \$232.00

Film Rental, \$877.22

Film Freight, \$37.05

General Expense, \$51.22

Replacement, Repairs, \$18.09

Adv., \$149.13

Light, Water, Tele., \$203.25

Heat, \$80.70—Insurance, Taxes, \$63.00

Miscel., None.

Rental, \$201.87—Total 1913.53

Net Profit.....\$ 314.73

[447]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MAY, 1932.

Working sheet shows following items:

Wages: O. Sinclair, \$75.00—L. Sinclair, \$45.00—

J. Gaualko, \$50.00—Chas. Whyte, \$25.00—Edna Riendeau, \$20.00.

Film Rental: Warner Bros., 50%, \$256.52—Paramount 50%, \$541.67—Fox Film, \$359.59.

Film Freight: City Wharf, \$26.54.

General Expense: None.

(Testimony of Charles M. Tuckett.)

Replacement, Repairs: None.

Adv: Piggly Wiggly (cigarettes), \$25.22—Queen
Anne Candy, \$21.00—Strollers Weekly, \$30.00.

Light, Water, Tele: A. E. L. & P. Co., \$143.25—
Juno Water, \$4.00—Juno Tele., \$3.00.

Heat: Standard Oil, \$20.35.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2119.23

Totals: Wages, \$215.00

Film Rental, \$1157.78

Film Freight, \$26.54

General Expense, None

Replacement, Repairs, None

Adv., \$76.22

Lite, Water, Tele., \$150.25

Heat, \$20.35

Insurance, Taxes, \$63.00

Miscel., None

Rental, \$201.87—Total 1911.01

Net Profit.....\$ 208.22

[448]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JUNE, 1932.

Working sheet shows following items:

Wages: L. Sinclair, \$45.00—Edna Riendeau, \$20.00
—D. Sinclair, \$75.00—J. Gaualko, \$50.00—
Chas. Whyte, \$50.00.

Film Rental: None.

Film Freight: None.

General Expense: None.

Replacement, Repairs: Thos. Hdwe., \$9.50.

Adv: Strollers Weekly, \$6.00—Juno Chamber Com-
merce, \$10.00—Juno Florists, \$6.72—Empire
Printg. Co., \$42.00.

Light, Water, Tele: Juno Water, \$4.00—A. E. L.
& P. Co., \$107.50—Juno Telephone, \$3.00.

Heat: Union Oil, \$20.35.

Insurance, Taxes: 1/12 City Taxes.

Misc: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2337.95

Totals: Wages, \$240.00

Film Rental, None

Film Freight, None

General Expense, None

Replacement, Repairs, \$9.50

Adv., \$64.72

Light, Water, Tele., \$114.50

Heat, \$20.35

Insurance, Taxes. \$63.00

Misc., None

Rental, \$201.87—Total 713.94

Net Profit.....\$1624.01

[449]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JULY, 1932.

Working sheet shows following items:

Wages: Edna Riendeau, \$20.00—L. Sinclair, \$45.00—D. Sinclair, \$75.00—J. Gaualko, \$36.63—Chas. Whyte, \$25.00.

Film Rental: U. S. Signal Corps, (wire-Mining Merchants Bank 50%) \$182.87—Educational Pictures 50%, \$164.19—Fox Films 50%, \$10.33.

Film Freight: City Wharf. \$34.22—Northland Transp. Co., \$3.81—J. Gross Transfer, \$22.11.

General Expense: None.

Replacement, Repairs: Thomas Hdwe., \$12.10—Henry Pigg. \$30.00—International Laboratory, \$3.00.

Adv: Empire, \$66.15—Queen Anne Candy. \$21.00—Film Roll Press, \$11.25.

Lights, Water, Tele: A. E. L. & P. Co., \$116.57—Juno Water, \$4.00—Juno Telephone, \$3.00.

Heat: Standard Oil. \$25.20.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$1984.28

Totals: Wages, \$201.63

Film Rental, \$357.39

Film Freight, \$60.14

General Expense, None

Replacement, Repairs, \$41.10

(Testimony of Charles M. Tuckett.)

Adv., \$98.40

Light, Water, Tele., \$123.57

Heat, \$25.20—Taxes, Insurance, \$63.00

Miscel., None

Rental, \$201.87—Total 1176.30

Net Profit.....\$ 807.98

[450]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR AUG. 1932.

Working sheet shows following items:

Wages: L. Sinclair, \$45.00—Jas. Grigsby, \$20.00—

D. Sinclair, \$62.50—Chas. Tuckett, \$75.00.

Film Rental: Educational Films 50%, \$216.17—

Fox Films 50%, \$316.45—Educational Films

50%, \$117.47—Educational Films 50%, \$98.15

—R. K. O. Distributors 50%, \$200.42—R. K. O.

Dist., 50%, \$134.45—Educational Films 50%,

\$175.83—Fox Films 50%, \$316.45—Fox Films

50%, \$41.65.

Film Freight: None.

General Expense: Allied Amusements, \$14.95.

Replacement, Repairs: None.

Adv: Alaska Empire, \$97.45—Strollers Weekly,

\$6.00—Queen Anne Candy, \$21.00.

Water, Light, Tele: A. E. L. & P. Co., \$136.69—

Juno Water, \$4.00—Juno Tele., \$3.00.

(Testimony of Charles M. Tuckett.)

Heat: Standard Oil, \$27.85.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Misc: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2431.46

Totals: Wages, \$202.50

Film Rental, \$1617.04

Film Freight, None

General Expense, \$14.95

Replacement, Repairs, None

Adv., \$124.45

Light, Water, Tele., \$143.69

Heat, \$27.85—Insurance, Taxes, \$63.00

Misc., None

Rental, \$201.87—Total 2395.35

Net Profit.....\$ 36.11

[451]

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR SEPT. 1932.

Working sheet shows following items:

Wages: Chas. Tuckett, \$75.00—O. Sinclair, \$62.50
—L. Sinclair, \$45.00—J. Gawalko, \$50.00—Jane
Grigsby, \$20.00.

Film Rental: Fox Films 50%, \$359.90—Vitagraph
50%, \$472.01—Educational Films 50%, \$153.64
—Vitagraph Inc. 50%, \$383.72—Paramount
Publix 50%, \$335.69—Universal Film 50%,
\$53.42—Fox Film 50%, \$348.69—Fox Film 50%,
\$41.43.

(Testimony of Charles M. Tuckett.)

Film Freight: City Wharf, \$22.99—Aaa. S. S. Co., \$7.00.

General Expense: None.

Replacement, Repairs: None.

Adv: Strollers Weekly, \$6.50—Empire, \$96.95—Queen Anne Candy, \$21.00.

Light, Water, Tele: A. E. L. & P. Co., \$110.35—Juno Tele., \$3.00—Juno Water, \$4.00.

Heat: Standard Oil, \$20.40.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2044.95

Totals: Wages, \$252.50

Film Rental, \$2148.50

Film Freight, \$29.99

General Expense, None

Replacement, Repairs, None

Adv., \$124.45

Light, Water, Tele., \$117.35

Heat, \$20.40—Insurance, Taxes, \$63.00

Miscel., None

Rent, \$201.87—Total 2958.06

Net Loss.....\$ 913.11

[452]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR OCT. 1932.

Working sheet shows following items:

Wages: L. Sinclair, \$45.00—G. Cortez, \$25.00—O. Sinclair, \$62.50—Jane Grigsby, \$20.00—Chas. Tuckett, \$75.00—Jane Grigsby, \$10.00.

Film Rental: Educational Films 50%, \$173.89—Fox Film 50%, \$324.85—Paramount Publix 50%, \$401.82—Vitaphone Inc., \$388.05.

Film Freight: O. B. Femmer, \$9.58.

General Expense: None.

Replacement, Repairs: National Theatre Supply, \$58.12.

Adv: Strollers Weekly, \$6.50—Alaska Empire, \$74.55.

Lights, Water, Tele: A. E. L. & P. Co., \$134.52—Juno Water, \$4.00—Juno Telephone, \$3.00.

Heat: Union Oil, \$50.40.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Miscel: None.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2857.10

Totals: Wages, \$237.50

Film Rental, \$1288.61

Film Freight, \$9.58

General Expense, None

Replacement, Repairs, \$58.12

Adv., \$81.05

Light, Water, Tele., \$141.52

Heat, \$50.40—Insurance, Taxes, \$63.00

Miscel., None.

Rental, \$201.87—Total 2131.65

Net Gain.....\$ 725.45

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT, NOV. 1932.

Working sheet shows following items:

Wages: L. Sinclair, \$45.00—Geo. Cortez, \$25.00—
Dorothy Tuckett, \$12.50—Chas. Tuckett, \$75.00
—D. Sinclair.

Film Rental: J. J. McMeekin, \$75.00—Educational
Films 50%, \$167.80—Universal Films 50%,
\$45.00—Warner Bros. Films 50%, \$385.72—
Fox Film 50%, \$354.59—Paramount Publix
Films 50%, \$553.05.

Film Freight: None.

General Expense: None.

Replacement, Repairs: Moder Repair, \$30.00.

Adv: Juneau Empire, \$70.00.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
& P. Co., \$119.19—Juno Telephone, \$3.00.

Heat: Standard Oil, \$25.20.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2244.60

Totals: Wages, \$220.00

Film Rental, \$1581.16

Film Freight, None

General Expense, None

Replacement, Repairs, \$30.00

Adv., \$70.00

Lights, Water, Tele., \$126.19

Heat, \$25.20—Insurance, Taxes, \$63.00

Rental, \$201.87—Total 2317.42

Net Loss.....\$ 72.82

[454]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR DEC. 1932.

Working sheet shows following items:

Wages: O. Sinclair, \$62.50—L. Sinclair, \$45.00—
 Geo. Cortez, \$25.00—O. Tuckett, \$25.00—Chas.
 Tuckett, \$75.00.

Film Rental: R. K. O. Dist. 50%, \$121.15—Warner
 Bros. 50%, \$400.82—Fox Film 50%, \$277.30.

Film Freight: Gross Transfer, \$27.00.

General Expense: None.

Replacement, Repairs: Henry Pigg, \$15.00.

Adv: Strollers Weekly, \$7.13—Empire Printg. Co.,
 \$61.50.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
 & P. Co., \$168.97—Juno Tele. Co., \$3.00.

Heat: Standard Oil, \$25.20.

Insurance, Taxes: 1/12 City Taxes, \$63.00.

Rental: Rental all 6%, \$201.87.

Gross Receipts:\$2330.75

Totals: Wages, \$232.50

Film Rental, \$799.27

Film Freight, \$27.00

General Expense, None.

Replacement, Repairs, \$15.00

Adv., \$68.63

Light, Water, Tele., \$175.97

Heat, \$25.20—Insurance, Taxes, \$63.00

Rental, \$201.87—Total 1608.44

Net Profit.....\$ 722.31

(Testimony of Charles M. Tuckett.)

Witness Tuckett testified defendant's Exhibit K-4 was made up in the same manner, profits and losses figured the same way and on the same data and everything else shown on the work sheets or summary, exactly as in Exhibits K-1, 2 and 3. He read to the jury the first page of Exhibit K-4 and further testified that the net profit before depreciation was \$1,563.00 and that he took \$6700.00 depreciation, leaving a loss of \$5,136.60. [455]

EXHIBIT No. K-5

PROFIT AND LOSS STATEMENT

1933

COLISEUM THEATRE

Juneau, Alaska

	Total Receipts	Total Expenses	Net Profits	Net Loss
January	\$ 2,035.70	\$ 1,517.33	\$ 518.37	
February	2,071.55	1,681.20	390.35	
March	1,832.50	1,291.16	541.34	
April	1,759.69	1,546.22	213.47	
	\$ 7,699.44	\$ 6,035.91	\$ 1,663.53	
Proof	6,035.91			
	\$ 1,663.53			

Memorandum :

Depreciation for (4) Months in 1933\$ 2,266.64
 Net Profit for year 1933 (4 months) 1,663.53

Net Loss for 4 Months of 1933\$ 603.11
 (Loss)

House turned over to B. F. Shearer on May 1st, 1933.

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR JANUARY, 1933.

Working sheet shows following items:

Wages: Geo. Cortez, \$25.00—L. Sinclair, \$45.00—
 Mrs. Tuckett \$25.00—D. Sinclair, \$62.50—
 Chas. Tuckett, \$75.00—Chas. Whyte, \$16.70—
 D. J. Sinclair, \$8.00.

Film Rental: RKO Distribution 50%, \$63.75—
 Sheffield Exchange 50%, \$50.00—Paramount
 Exchange 50%, \$564.59.

Film Frt: O. B. Femmer, \$9.91—City Wharf,
 \$6.74.

General Expense: Harrison Reports, \$16.50—
 American Express, \$2.60.

Replacement: H. Pigg, \$20.00.

Adv: Empire, \$79.40—A. Empire, \$1.80.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
 & P. Co., \$181.76—Juno Tele., \$3.00.

Heat: Union Oil, \$25.20.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$167.88.

Gross Receipts:\$2,035.70

Totals: Wages, \$257.20

Film Rental, \$678.34

Film Frt., \$16.65

General Expense, \$19.10

Replacement, \$20.00—Adv., \$81.20

Lights, Water, Tele., \$188.76

Heat, \$25.20—Ins. & Taxes, \$63.00

Rental, \$167.88—Total 1,517.33

Net Profit.....\$ 518.37

[457]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR FEBRUARY, 1933.

Working sheet shows following items:

Wages: Geo. Cortez, \$25.00—D. Sinclair, \$62.50—
L. Sinclair, \$45.00—Mrs. Tuckett, \$25.00—
Chas. Tuckett, \$75.00.

Film Rental: Educational Films 50%, \$40.00—
RKO Dist. 50%, \$103.47—Fox Films 50%,
\$286.82—Warner Films 50%, \$411.52—U. S.
Slides 50%, \$2.50.

Film Frt: D. B. Femmer, \$6.50.

General Expense: Seattle Rubber Stamp, \$1.00.

Replacement: Thomas Hdwe., \$6.29—B. F.
Shearer Co., \$96.56.

Adv: Daily Empire, \$53.35—Strollers Weekly,
\$5.00.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
& P. Co., \$172.61—Juno Tele., \$3.00.

Heat: Standard Oil, \$25.20.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$167.88.

Gross Receipts:\$2,071.55

Totals: Wages, \$232.50

Film Rental, \$844.31

Film Frt, \$6.50

General Expense, \$1.00

Replacement, \$102.85

Adv., \$58.35

Lights, Water, Tele., \$179.61

Heat, \$25.20—Ins. & Taxes, \$63.00

Rental, \$167.88—Total 1,681.20

Net Profit.....\$ 390.35

[458]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR MARCH, 1933.

Working sheet shows following items:

Wages: L. Sinclair, \$45.00—D. Sinclair, \$62.50—
 Geo. Cortez, \$25.00—Chas. Tuckett, \$75.00—
 Mrs. Tuckett, \$25.00.

Film Rental: Paramount Publix 50%, \$545.41.

Film Frt: J. Gross Transfer, \$13.50.

General Expense: None.

Replacement: Thomas Hdwe. Co., \$8.32.

Adv: Empire, \$82.70.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
 & P. Co., \$145.65—Juno Telephone, \$3.00.

Heat: Standard Oil, \$25.20.

Ins. & Taxes: City Taxes 1/12, \$63.00.

Rental: Rental all 6%, \$167.88.

Gross Receipts:\$1,832.50

Totals: Wages, \$232.50

Film Rental, \$545.41

Film Frt., \$13.50

General Expense, None

Replacement, \$8.32

Adv., \$82.70.

Light, Water, Tele., \$152.65

Heat, \$25.20—Ins. & Taxes, \$63.00

Rental, \$167.88—Total 1,291.16

 Net Profit.....\$ 541.34

[459]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Juneau

EXPENSE ACCOUNT FOR APRIL, 1933.

Working sheet shows following items:

Wages. L. Sinclair, \$45.00—D. Sinclair, \$62.50—
Chas. Tuckett, \$75.00—Geo. Whyte, \$20.00—
Geo. Cortez, \$25.00.

Film Rental: RKO Films 50%, \$12.50—Fox Films
50%, \$186.84—RKO Pathe 50%, \$99.25—War-
ner Bros. 50%, \$426.97—Sheffield Exchange
50%, \$50.00.

Film Frt: City Wharf, \$10.83.

General Expense: None.

Replacement: Smith Electric Co., \$9.60.

Adv: Empire Printing Co., \$44.74—Queen Anne
Candy, \$63.00.

Lights, Water, Tele: Juno Water, \$4.00—A. E. L.
& P. Co., \$141.91—Juno Tele. Co., \$3.00.

Heat: Union Oil Co., \$25.20.

Ins. & Taxes: Terr. Treasurer, \$10.00—City Taxes
1/12, \$63.00.

Rental: Rental all 6%, \$167.88.

Gross Receipts:\$1,759.69

Totals: Wages, \$227.50

Film Rental, \$775.56

Film Frt., \$10.83

General Expense, None

Replacement, \$9.60

Adv., \$107.74

Lights, Water, Tele., \$148.91

Heat, \$25.20—Ins. & Taxes, \$73.00

Rental, \$167.88—Total 1,546.22

Net Profit.....\$ 213.47

(Testimony of Charles M. Tuckett.)

Witness Tuckett testified that defendant's Exhibit K-5 was the work sheet and summary of the Juneau Coliseum theatre for the first four months of 1933, and were prepared in the same manner and show the same thing as the previous exhibits relating to these matters were prepared, and was calculated on the same basis and from the same books and in the same manner. Witness Tuckett read the first page of Exhibit K-5 to the jury and stated it showed \$1,633.53 profit before depreciation and \$603.11 loss after depreciation. [460]

Whereupon Witness Tuckett further testified: The capital investment in the Juneau theatre was \$90,000.00 so appraised in 1929 the same as at Ketchikan by Clausen and myself, which was the actual value placed on all assets, sound equipment and everything in that theatre in 1929 and 6% interest was charged as interest on the capital investment in calculating the Juneau profits; these documents, exhibits K-1 to K-5, both inclusive, were made from defendant's check books, defendant's exhibits H-2, H-3 and H-5; the items constituting receipts shown on the exhibits K-1 to K-5, both inclusive were taken from the deposits and the daily statements and represent all the receipts during that period; the items of expense were taken from the check book; in calculating the expenses I allocated 50% of the cost of films to Juneau; in arriving at our film expense I took 50% of the total cost of the films; those films were used in Ketchikan and sev-

(Testimony of Charles M. Tuckett.)

eral small theatres; 25% went to the small theatres, 25% to the Ketchikan theatre; I divided the monthly wages in half as employees worked only four hours in the theatre and they had other business to do in taking care of defendant's apartment building and house, in fact they worked at the theatre half the time so the salary was only worth half for the theatre and half for other expenses and I charged it that way; my salary as Manager—the fact that I was doing all the other work, taking care of the books, supervising the work of the extra men and other departments and the different properties defendant had, watching out for shipments of film, etc., the majority of my work wasn't in the theatre, half my work was in the theatre, and the other half was attending to his other business so I charged only half my salary to the theatre; I took a monthly average of the light bill as it also included defendant's home and hall lights of the theatre and of the Gross apartments, and I deducted \$14.00 a month and charged the rest as expense to the theatre; the oil bill is paid under one check for the whole thing the same as the light and my books showed just that one check, but oil was used up to [461] defendant's house and also at Gross Apartments and we divided it either one load of oil or two loads a month; I know I took off one load each month and two some months as not having been used in the Coliseum theatre and deducted the price of those loads from the oil bill; I carried 6% on the

(Testimony of Charles M. Tuckett.)

capital investment as rent; those are the only items; all the other items were taken from my books as actually expended for the Coliseum Theatre; they are correct; the allocation is fair; the work sheets show all the receipts and expenses, and the result in profit and loss; these statements (defendant's Exhibits series I and K, also J and L) are all made on the same basis; the items of expense are taken from the books (defendant's Exhibits series H) in evidence; I know of my personal knowledge what items belong to the Juneau Coliseum Theatre, and only those items were used, and that goes for all these statements (defendant's Exhibits series I and K, also J and L); they contain only items in the books referring to the Coliseum Theatre; this property was depreciated by taking 5% on buildings and things of that sort and 10% [462] on the machinery and furnishings; that depreciation was taken throughout; after the equipment was replenished from defendant's Juneau Theatre, salaries were reduced \$50.00, then \$25.00 until they were down to the present rate, for manager from \$250.00 to \$150.00, and in like proportion for other employees.

Whereupon the following proceedings were had:

“Q. Did you make any other retrenchment in the matter of expenses during that period?

Mr. ROBERTSON: Object to all this line of testimony as incompetent, irrelevant and immaterial; it doesn't go to the true measure of damages.

(Testimony of Charles M. Tuckett.)

The COURT: Objection overruled.

Mr. ROBERTSON: Exception; and I would like to have the same objection go to all this line of testimony instead of objecting to each question propounded to the Witness Tuckett.

The COURT: Very well.

(Last question read)

A. Yes, we started to cut salaries and reducing our overhead such as trying to reduce our film rental, reducing our advertising.

Q. Saved wherever you could?

A. Saved wherever we could on it."

Thereupon Witness Tuckett stated: Defendant's exhibit K-6 for identification is the summary that I made up of the average monthly profit or loss of defendant's Juneau theatre for the years covered by defendant's exhibits K-1 to K-5, both inclusive, and was taken from them.

Thereupon said summary was offered in evidence, to which plaintiff objected on the ground that it was incompetent, irrelevant and immaterial and had no bearing on the true measure of damages, which objection was overruled, to which ruling plaintiff then excepted, whereupon said summary was admitted in evidence and marked

DEFENDANT'S EXHIBIT K-6,

and reads: [463]

(Testimony of Charles M. Tuckett.)

AVERAGE MONTHLY PROFIT AND LOSS STATEMENT.

COLISEUM THEATRE

Juneau, Alaska

Monthly average profit or loss without depreciation	1929	\$1569.48 5/6 profit per month
Monthly average profit or loss with depreciation	1929	\$1094.48 5/6 profit per month
Monthly average profit or loss without depreciation	1930	\$1514.21 7/12 profit per month
Monthly average profit or loss with depreciation	1930	\$ 930.88 1/4 profit per month
Monthly average profit or loss without depreciation	1931	\$ 255.01 7/12 loss per month
Monthly average profit or loss with depreciation	1931	\$ 796.68 1/14 loss per month
Monthly average profit or loss without depreciation	1932	\$ 130.28 1/3 profit per month
Monthly average profit or loss with depreciation	1932	\$ 428.05 loss per month
Monthly average profit or loss without depreciation (4 mths)	1933	\$ 415.88 1/4 profit per month
Monthly average profit or loss with depreciation (4 mths)	1933	\$ 150.77 3/4 loss per month
Monthly average profit or loss May 1, 1929 to (W E installed) May 1, 1931 (\$33,707.22 profit—24 mths) No depreciation		\$1404.46 3/4 profit per month
Monthly average profit or loss same condi- tions and time but with depreciation		\$ 864.15 profit per month
Monthly average profit or loss May 1, 1931 to (W E not installed) May 1, 1933 (\$1540.22 profit—24 mths) No depreciation		\$ 64.17 profit per month
Monthly average profit or loss same condi- tions and time but with depreciation (11759.70 loss)		\$ 489.98 3/4 loss per month

(Testimony of Charles M. Tuckett.)

Thereupon Witness Tuckett, in answer to questions, read to the jury the various items shown on Exhibit K-6 and testified that the average monthly profit without depreciation commencing with the period May 1, 1929, and ending May 1, 1931, when the equipment was in was \$1,420.46 before depreciation and \$854.15 after depreciation; that the average monthly profit during the [464] months following the taking out of the equipment until Shearer took the equipment over was \$64.17 before depreciation and after depreciation loss of \$489.98; that the difference in average monthly profit during the period following the taking out of the equipment and extending from that time until Shearer took over the equipment, from the average monthly profit during the period the equipment was in from May, 1929, to May, 1931, \$1340.29 before depreciation, and \$1354.13 after depreciation—that is the difference between the average monthly loss during the two periods: the difference in profits between the two periods is \$32,165.96, that is the loss during the second period after equipment was taken out and before depreciation; that defendant's Exhibit L are copies of Shearer's Financial report to Gross covering the Juneau Coliseum theatre and show the profits and losses in that theatre since he took it over.

[465]

Thereupon said documents were offered in evidence to which plaintiff objected upon the ground that they were incompetent, irrelevant and immaterial, and not the true measure of damages, which objection was overruled, to which ruling plaintiff then excepted, whereupon said documents were received in evidence marked

(Testimony of Charles M. Tuckett.)

DEFENDANT'S EXHIBIT L,

and read:

JUNEAU EMPIRE THEATRES. INC.

Operating Statement

COLISEUM THEATRE, Juneau, Alaska

May 31, 1933

Receipts		1,131.40
Less Expenses:		
Film Rental	495.00	
Advertising	183.77	
Salaries	237.97	
Heat, Light and Water	62.79	
Rent	200.00	
Bank Charges	2.43	1,181.96
		<hr/>

Loss—Coliseum Theatre, Juneau\$ 50.56

Theatre operating part-time, with old-type sound equipment.

June 30, 1933

Receipts		\$ 451.05
Less Expenses:		
Film Rental	\$ 143.50	
Advt. B. P.	39.03	
Advt. Newspaper	56.75	
Advt. Miscel.		
Operator's Salary	66.56	
Miscel. Salaries	62.58	
Heat, Light and Water	39.75	
Rent	200.00	
Proj. Room & House Supplies	12.70	
Freight	1.00	
Insurance	14.00	
		<hr/>
Total Expenses		615.69

Loss—Coliseum Theatre, Juneau\$ 164.64

Theatre operating part-time, with old-type sound equipment.

(Testimony of Charles M. Tuckett.)

July 31, 1933

Receipts		\$1,580.25	
Less Expenses:			
Film Rental	683.37		
Advt. B. P.	84.73		
Advt. N. P.	137.00		
Advt. Misc.	6.50		
Manager's Salary	66.67		
Operator's Salary	87.39		
Misc. Salaries	73.92		
Heat, Light and Water	67.64		
Rent	200.00		
Bank Charges	.12		
Proj. Room & House Sup.	40.50		
Freight	1.50		
Insurance	14.00		
Misc. Expense	.75		
Repairs	21.65		
Service on Sound	26.00		
Rental on Sound	15.77	1,527.51	
		<hr/>	
Total Expenses			
Profits—Coliseum Theatre, Juneau		\$	52.74

August, 1933

Box Office Receipts		1,472.85	
Slide Rental		37.50	
		<hr/>	
		\$1,510.35	
Less Expenses:			
Film Rental	793.20		
Advt. Bill Posters	93.17		
Advt. Miscellaneous	41.14		
Advt. Newspapers	89.65		
Salary—Manager	75.00		
Salary—Operator	120.00		
Misc. Salaries	192.49		

(Testimony of Charles M. Tuckett.)

Heat, Light and Water	77.90
Rent	200.00
Tax on Checks	.76
Proj. Room & House Sup.	38.08
Freight	18.52
Insurance	14.60
Rental on Sound Equipment	47.31
Sound Installation Exp.	27.32
Telephone and Telegraph	9.54
Postage	5.00
Bank Charges	4.25
Interest	4.34
Taxes and Licenses	7.50

Total Expenses	1,859.77
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Loss—Coliseum Theatre, Juneau	\$ 349.77
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[467]

September 30, 1933

Receipts	\$1,793.80
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Less Expenses:

Film Rental	928.75
Advt. Bill Posters	108.13
Advt. Newspapers	96.95
Advt. Miscellaneous	11.85
Salary—Manager	75.00
Salary—Operator	120.00
Miscellaneous—Salaries	219.74
Heat, Light	84.33
Rent	200.00
Tax on Checks	1.02
Proj. Room & House Sup.	24.93
Freight	24.06
Insurance	14.60
Rental on Sound Equipment	63.08
Sound Installation Exp.	130.00

(Testimony of Charles M. Tuckett.)

Telephone and Telegraph	7.39
Office Supplies	1.60
Postage	2.00
Bank Charges	5.10
	<hr/>
Total Expenses	2,118.53

Loss—Coliseum Theatre, Juneau\$ 324.73

October, 1933

Receipts \$1,605.45

Expenses:

Film Rental	1,046.82
Advt. Bill Posters	118.61
Advt. Newspapers	93.90
Advt. Miscellaneous	23.32
Salary—Manager	75.00
Salary—Operator	120.00
Miscellaneous Salaries	217.41
Heat, Light	82.65
Rent	200.00
Tax on Checks	1.19
Proj. Room & House Sup.	34.15
Freight	18.52
Insurance	14.60
Rental on Sound Equipment	78.85
Telephone and Telegraph	5.11
Office Supplies	2.26
Postage	6.68
Bank Charges	5.57
Taxes and Licenses	10.00

Total Expenses

 2,154.94

Loss—Coliseum Theatre, Juneau\$ 549.49

(Testimony of Charles M. Tuckett.)

November, 1933

Receipts, Box Office \$1,899.15

Expenses :

Film Rental	989.50
Advt. B. P.	103.50
Advt. N. P.	102.55
Advt. Misc.	61.59
Salary—Manager	83.33
Salary—Operator	90.00
Misc. Salaries	218.10
Heat and Light	106.05
Rent	200.00
Tax on Checks	.75
Proj. Room & House Sup.	16.57
Freight	24.44
Insurance	14.60
Rental on Sound Equip.	63.08
Telephone and Telegraph	9.86
Office Supplies	1.93
Postage	1.00
Bank Charges	3.32
Interest Paid	4.37
Service on Sound	11.67

Total Expense	2,106.21
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Loss—Coliseum Theatre, Juneau, Alaska.....\$ 207.06

December, 1933

Box Office	1,297.10
Slide Rental	65.00
Theatre Rental	100.00
	1,462.10

Expenses :

Film Rental	948.39
Freight and Express	18.39
Advt. B. P.	65.19
Advt. N. P.	87.50

(Testimony of Charles M. Tuckett.)

Advt. Miscel.	43.26
Salary—Manager	83.32
Salary—Operator	90.00
Salary—Miscel.	219.12
Booth and House Expense	34.42
Rent	200.00
Heat, Light and Water	125.20
Telephone and Telegraph	6.94
Office Supplies	4.36
Bank Charges	4.29
Tax on Checks (Cr.)	1.97
Insurance	30.35
Rental of Sound Equip.	63.08
	<hr/>
Total Expenses	2,021.84

Loss—Coliseum Theatre, Juneau\$ 559.74
[469]

January, 1934

Box Office \$1,727.05

Expenses:

Film Rental	\$ 912.25
Advt. B. P.	81.75
Advt. N. P.	94.85
Manager's Salary	83.33
Operator's Salary	90.00
Miscel. Salaries	213.00
Heat and Light	121.00
Rent	200.00
Proj. Room & House Sup.	9.10
Freight	3.32
Rental on Sound Equipment	63.08
Telephone and Telegraph	9.19
Insurance	14.60
Postage	5.00
Bank Charges	3.92
Tax on Checks	.71

Total Expenses

1,905.10

Loss—Coliseum Theatre, Juneau\$ 178.05

(Testimony of Charles M. Tuckett.)

February, 1934

Box Office Receipts 1,732.80

Expenses:

Film Rental	\$ 876.50
Freight	33.62
Adv. B. P.	94.60
Adv. N. P.	71.40
Adv. Misc.	14.50
Manager's Salary	83.34
Operator's Salary	90.00
Misc. Salary	177.50
Proj. Room & House Sup.	
Rent	200.00
Heat, Light and Water	110.95
Telephone and Telegraph	7.22
Office Supplies	
Postage	1.50
Insurance	14.60
Maintenance	6.10
Bank Charges	3.32
Tax on Checks	.85
Rental on Sound Equipment	78.85
Taxes and Licenses	

Total Expense	1,864.85
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Loss—Coliseum Theatre, Juneau	\$ 132.05
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[470]

March, 1934

Box Office Receipts \$1,994.60

Slide Rental 70.00

	1,064.60
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Expenses:

Film Rental	1,265.50
Freight	33.00
Adv. B. P.	130.75
Adv. N. P.	112.00
Adv. Misc.	25.63

(Testimony of Charles M. Tuckett.)

Manager's Salary	83.33
Operator's Salary	90.00
Miscel. Salary	187.11
Proj. Room & House Sup.	33.24
Rent	200.00
Heat, Light and Water	106.55
Telephone and Telegraph	7.19
Office Supplies	11.15
Postage	2.50
Insurance	14.60
Maintenance	
Bank Charges	5.37
Tax on Checks	1.09
Rental on Sound Equip.	63.08
Taxes and Licenses	12.00
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Total Expense	2,384.09
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Loss—Coliseum Theatre, Juneau\$ 319.49

April, 1934

Box Office Receipts 2,287.20

Expenses:

Film Rental	1,238.50
Freight	28.32
Adv. B. P.	169.13
Adv. N. P.	102.90
Adv. Miscel.	79.87
Manager's Salary	83.34
Operator's Salary	90.00
Miscel. Salaries	227.50
Proj. Room & House Sup.	39.66
Rent	200.00
Heat, Light & Water	98.60
Telephone and Telegraph	15.91
Office Supplies	5.50
Postage	3.75
Insurance	14.60
Maintenance	62.06
Bank Charges	5.30

(Testimony of Charles M. Tuckett.)

Tax on Checks	1.12
Rental on Sound Equip.	71.15
Taxes and Licenses	
Rental of Uniforms	6.00
Interest Paid	

Total Expenses	2,543.21
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Loss—Coliseum Theatre, Juneau	\$ 256.01
	[471]

May, 1934

Box Office Receipts	2,229.30
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Expenses:

Film Rental	1,327.25
Freight	27.58
Adv. B. P.	83.15
Adv. N. P.	106.75
Adv. Misc.	18.75
Manager's Salary	83.34
Operator's Salary	90.00
Misc. Salaries	227.50
Proj. Room & House Sup.	34.52
Rent	200.00
Heat, Light and Water	82.00
Telephone and Telegraph	10.12
Office Supplies	3.34
Postage	3.75
Insurance	27.12
Maintenance	40.89
Bank Charges	3.00
Tax on Checks	1.19
Rental on Sound Equip.	63.08
Taxes and Licenses	6.00
Rental of Uniforms	6.00
Interest Paid	6.12

Total Expenses	2,451.45
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Loss—Coliseum Theatre, Juneau	\$ 222.15
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(Testimony of Charles M. Tuckett.)

Thereupon witness Tuckett testified: Defendant's Exhibit M for identification is defendant's income tax return for 1929.

Whereupon the following proceedings took place:

Mr. HELLENTHAL: I offer that in evidence.

Mr. ROBERTSON: Same general objection, if the court please.

The COURT: It may be received.

Mr. ROBERTSON: Exception.

The COURT: You called for it yourself.

Mr. ROBERTSON: We wanted to inspect it, is all.

Q. Calling your attention to defendants' exhibit "M", that is Mr. Gross' income tax report for 1929? [472]

A. Yes.

Q. Does that show the same profits and losses you show in your tabulation for 1929?

A. I can't say exactly whether it shows the same or not.

Q. Is it calculated exactly the same way?

A. Yes sir.

Q. Did you prepare them?

A. Yes sir.

Q. You are familiar with them?

A. Yes.

Q. State whether that can be checked down to show the same system for Ketchikan your tabulation and reports show.

A. Yes.

(Testimony of Charles M. Tuckett.)

Q. Have the same methods been applied to that as to your report?

A. Yes sir.

Q. With reference to the films, for instance, do they show in there as expenses of the Coliseum theatre in Ketchikan and Juneau or in Ketchikan with the Alaska Film Exchange?

A. Alaska Film Exchange.

Q. Alaska Film Exchange is also calculated in that?

A. Yes sir.

Q. And what other theatres?

A. That is all in this one—the two theatres Juneau and Ketchikan and the Alaska Film Exchange.

Q. There were no other theatres at that time?

A. Not that Mr. Gross controlled.

Q. That is the only income tax report you made during 1929?

A. Yes.

Q. And that shows the situation as it is shown in your reports?

A. Yes, sir.

The COURT: Does that include other income except from these two theatres?

A. Yes. [473]

Q. (The COURT): Is it separated in such a way that it will be intelligible?

(Testimony of Charles M. Tuckett.)

A. The incomes do, but the expenditures is other than could be applied to the two theatres. It shows expenditures all over the circuit in different places.

Q. Show the expenditures over all the various circuits?

A. Well, it shows he has got receipts on that income from what he received from the apartments, and as we explained in the Juneau part of the salaries the full salaries included in that report are for only half charged to the Coliseum theatre?

Q. It shows here all charged to the Coliseum theatre?

A. It is all charged in the report we made, blanket report of salaries and expenditures and subtracted from the amount of money he received.

Q. How about the small theatres?

A. He was getting return from some of them.

Q. Does that show in here?

A. Yes.

Q. Under a separate head?

A. I will have to look and see—yes—this shows the total rent from the apartment and stores included in that item there.

Q. That doesn't show the expenses of the Coliseum by itself?

A. No sir.

(Testimony of Charles M. Tuckett.)

Q. Nor the expenses of the Coliseum in Ketchikan by itself?

A. No sir.

Q. It would require quite a little bookkeeping to arrive at your exact figures the way you have it segregated?

A. Yes, that is why we made the work sheets.

Q. But the ultimate result—is that the same?

A. Yes.

Q. That is, the profits shown were so much from Juneau or so much from Ketchikan, is that the same as the profit arrived at by you?

A. No.

Q. Why isn't it?

A. Because that was taken in blanket form.

Q. You took in more expenses, they wouldn't belong to the Coliseum theatre?

A. Yes. [474]

Q. Either at Juneau or Ketchikan?

A. Yes.

Q. So your profits would be somewhat larger than these?

A. Yes.

Q. That is due to the fact that you, as you say, took in other expenses in the Gross apartments, bills and things of that kind?

A. Yes.

Q. But are not charged in your report because they didn't belong to the theatre, is that true?

A. Yes sir.

(Testimony of Charles M. Tuckett.)

Q. I hand you here a paper marked 'M-1'.
Look at it and state what that is.

A. Income tax return for the year 1930,
covering all of Mr. Gross' business.

Q. Covering all the Gross theatres in operation,
of every kind?

A. Yes sir.

Q. What does that include?

A. All Mr. Gross' holdings.

Q. All of Mr. Gross' holdings. Did you prepare this?

A. Yes sir.

Mr. HELLENTHAL: I offer that in evidence.

Mr. ROBERTSON: We make the same general objection, if the court please.

The COURT: I think these both ought to be denied, at least for the time being. It is more confusing than anything else.

Mr. HELLENTHAL: The court rules out the previous one also?

The COURT: Yes.

Mr. HELLENTHAL: Let it be understood the previous exhibit is not in evidence, and this is also denied. And the court will make the same ruling on the income tax for 1931?

The COURT: Yes.

Mr. HELLENTHAL: We offer that and it may be ruled out; withdraw the previous offer, Your Honor.

(Testimony of Charles M. Tuckett.)

The COURT: Very well.

Mr. HELLENTHAL: Withdraw both for 1929 and for 1930 also. [475]

Thereupon Witness Tuckett further testified: I know defendant and was employed by him from 1925 to 1933 and was manager of the Juneau Coliseum Theatre and did other work for him besides from 1926 to 1933, also part of the time I was manager of the Ketchikan Theatre and of his smaller theatres in a way; the other regular manager of the Ketchikan Theatre was Louis Lemieux; we changed around about every year; I remember when sound equipment was installed in the Juneau Theatre in April or May, 1929, and in Ketchikan the following month; Harry Taylor was Installation Engineer and he came up with the equipment; I was his helper in assembling and installing it in both Ketchikan and Juneau; he explained the different parts to me and showed me how they went together and the workings of them; he did that with reference to each part; I was with him when he put them together, both in Juneau and Ketchikan; he gave me a general instruction how to keep up the equipment, make minor adjustments and repairs; also left me a manual; also I got several different volumes supposed to be authorities on equipment service and studied them; defendant raised my salary from \$150.00 to \$250.00 a month; after the equipment was installed in Juneau we went to Ketchikan where we proceeded in the same manner installing equipment;

(Testimony of Charles M. Tuckett.)

I stayed in Ketchikan six or seven months while Louis Lemieux was in Juneau; he was in Juneau but not in Ketchikan when the equipment was installed; he had gone through the same process I had with reference to the installation: I don't remember Witness Albright, I remember Witness Knowlton who came in, looked over the equipment, brought a lot of meters, tested the equipment, realigned the horns, saw the sound was right in the picture, gave it a general inspection to see that it was working right, I would say it was a thorough inspection; I was either here or Ketchikan when all the other inspection men were here that have been referred to in the evidence; I recall them all; I remember Darragh's name but not him; I never met Little; I remember Foulon; I don't remember Tobey; I remember Hurlburt, met him only once when he came down to the theatre; I remember Lawrence; I don't remember Smith, never met him.

I have gone over all of these inspection reports (plain- [476] tiff's exhibits Nos. 7 to 14, inclusive, Nos. 21 to 22, inclusive, and Nos. 23-A & 23-B) of Knowlton and the others and checked them carefully to see what these men did, and none of them report doing anything other than inspection and minor adjustments; these engineers, from first to last, did nothing except making inspections and minor adjustments, except Knowlton, who was the only man who did anything except inspection and minor adjustments; none of them, to my knowledge,

(Testimony of Charles M. Tuckett.)

made any real repairs; I don't remember whether any of these reports show any repairs made by them.

I inspected the machinery every night, made minor adjustments generally, same as the engineer does, checked the line voltage, back stage to the horns, each tube and different panels, exciter lights after the machine warmed up, the sound too if both horns were on while the machine was running; once a week go over the machines thoroughly to see they were oiled; every night, two or three times during the show, checked the sound to see if it had the right fader setting; whether good, bad or any trouble; pretty near every night we readjusted the photo electric cell; if a tube was weak, we put in a tube from the spare parts cabinet; on weekly inspections saw they had plenty of oil, machines cleaned up, no dirt in the lense; whether exciter light wasn't too dark or was performing as it should, seeing machine was all cleaned; every week we would go over the whole machine and, where there was any grease, wash it off with tetrachloride and any other dirt, clean it off; the service men who came up here and made inspections did nothing more than I did every day and every week; they sometimes made the same adjustments I made, because I never made adjustments until an hour or so before the show started at night; we would run it four or five hours the night and after the show you don't want to make adjustments, so we left it until the next day; the engineer usually came

(Testimony of Charles M. Tuckett.)

in the day time, morning or afternoon, consequently any adjustments necessary were caused through the last night's run; no engineer ever repaired the equipment, or [477] was ever present when there was real trouble or anything wrong; we had breakdowns or difficulties with the equipment.

Thereupon the following proceedings took place:

“Q. When did you have the first one—I mean the major ones—when did you have the first major breakdown that you had?

Mr. ROBERTSON: Object at this time to any testimony of any repairs or breakdowns in either of the two theatres, on the ground that more than two years ago we made demand on the defendant for a bill of particulars and motion to make more definite and certain his pleadings in this case, and an itemized statement of what repairs and major breakdowns he had in his machinery.

The COURT: What disposition was made of it?

Mr. ROBERTSON: It was overruled.

The COURT: The objection will be overruled.

Mr. ROBERTSON: Exception.

(Last question read).

A. When I was in Ketchikan right after the installation, two or three months after the installation.

Q. How serious was that breakdown?

A. Well, my machine was dead.

(Testimony of Charles M. Tuckett.)

Q. Who fixed it?

A. I did, and Mr. Fox, radio operator in Ketchikan.”

Whereupon Witness Tuckett further testified: Fox had nothing to do with plaintiff; there was no service man in sight at that time; none I could get right away, not without waiting at least two or three days, I couldn't say whether he could ge there faster or not. I think the next major breakdown was in the spring of 1930, it was a short circuit in the pre-amplifier; I couldn't use my disk; it blew out the fuse in the battery room; Ned Lemieux, the operator at that time, fixed it; there was no service man here at that time and I did not know there was one; I wired Seattle; they gave me data where to find the trouble, also told me a fellow named Smith was on the Northwestern and he would stop off with equipment. Of these three telegrams, the first one is the wire I sent to plaintiff in Seattle, the second, their answer, and the [478] third from Smith.

“Mr. HELLENTHAL: I offer them in evidence.

Mr. ROBERTSON: No objection other than I object to maintain my objection to this whole line of any testimony relative to any breakdown.

The COURT: It may be received.”

(Testimony of Charles M. Tuckett.)

Whereupon three telegrams were received in evidence, marked

PLAINTIFF'S EXHIBIT N,

and read as follows: [479]

“Collect Black Juneau Alaska Jan 17 1930

Electrical Research Products

458 Skinner Bldg Seattle

We have a short in our equipment when we throw lever from film to disc We blow out fuse in battery room Cant use disc film Side okay Advise how to find trouble Must know as it is impossible to get service man here in time

Coliseum Theatre

—
Seattle, Wash. January 17, 1930

Coliseum Theatre, Juneau, Alaska.

Check disc signal lamp for short circuit. stop. Remove cap and signal lamp. stop See Engineer E. V. Smith aboard Northwestern under instructions to service your equipment. Keep us advised.

Electrical Research Products, Inc.

Chge. Electrical Research Products, Inc.,

Service Dept.

458 Skinner Bldg.

(Testimony of Charles M. Tuckett.)

SS Northwestern—Juneau ALS

January 19 1930 5 PM

Charles Tucket

Coliseum Theatre

Juneau (Als)

Meet me at theatre Mondy eight AM Electrical
Research Engineer

E V Smith

535 PM" [480]

Whereupon Witness Tuckett further testified: Smith didn't show up for the appointment; the equipment had already been fixed when I received that wire from Seattle; the other trouble I had was that one of my drives froze up on the left hand machine; a little later than this, if I remember right, it was during Foulon's time but he was to the Westward, by which I mean Fairbanks, Anchorage, or somewhere to the Westward and there was no engineer here; I did not try to get one.

"Mr. ROBERTSON: Same objection to this testimony, if the court please.

The COURT: Same ruling.

Mr. ROBERTSON: Exception."

We tore down the drive and I and Zolman Gross fixed it; the trouble was that some new packing, Foulon had put in, hindered the oil from going to the shaft or got tangled up in the shaft, anyway

(Testimony of Charles M. Tuckett.)

it was froze; there were no more breakdowns of that kind; I had no schedule of Foulon's travels, I didn't know where to reach him, when he was to the Westward, or of Lawrence's travels; I don't remember Lawrence ever making any repairs to our equipment; I went over his reports.

Whereupon the following proceedings took place:

“Q. Do they show any repairs?

Mr. ROBERTSON: Object, the report is the best evidence.

A. Yes.

Mr. HELLENTHAL: That would be true ordinarily but this is an expert interpretation of something most of us don't know very much about.

The COURT: I think in view of the complicated nature of the reports he may answer.

Mr. ROBERTSON: Exception.

A. Not that I remember.

Q. Did you go over them?

A. Yes.

Q. For that purpose?

A. Yes.

Q. Would you remember them if you had found them?

A. I don't remember everything in there.

[481]

Q. Did you go over them with a view of finding out whether there were repairs?

A. Yes.

Q. Did you find any?

A. No. sir.”

(Testimony of Charles M. Tuckett.)

Thereupon Witness Tuckett further testified: Defendant went East in the fall of 1929, I don't remember the month; I received some bills, statements and communications from plaintiff in respect to service charges after, but not before, his departure; I received these contracts, plaintiff's exhibits Nos. 2 and 4, the latter part of 1929; don't remember the exact date, but after defendant went East; I also received a bill and I tried to get in touch with defendant about it but didn't succeed; these contracts I put them in my daily reports or messages to him and forwarded to him but they didn't reach him, because I received them back in Juneau; I don't remember the date I received this letter from plaintiff dated September 12, 1929, but it was while defendant was on his trip East.

Whereupon plaintiff's letter to defendant dated September 12, 1929, was received in evidence, marked

DEFENDANT'S EXHIBIT O.

and reads:

“September 12th, 1929.

Mr. W. D. Gross,
c/o Coliseum Theatres,
Juneau, Alaska.

RE: Coliseum Theatre,
Juneau, Alaska
Ketchikan, Alaska.

Dear Sir:

Enclosed you will find statement on the Coliseum Theatre at Juneau, Alaska, showing due the sum of

(Testimony of Charles M. Tuckett.)

\$541.10 and on the Coliseum Theatre at Ketchikan, Alaska, showing due the sum of \$481.60. You will also notice that we have added to these statements ten additional weeks at the rate of \$29.75, as we assume that it will take at least that time to receive your reply with remittance enclosed.

Upon receipt of this letter will you please place in the mail your remittance of \$836.60 on the Juneau account and \$779.10 on the Ketchikan account so that we may bring these accounts up to date without further delay. [482]

We also suggest that you arrange to mail your remittances weekly in advance as provided in your agreement and it would also assist us if you would write us in detail explaining the mailing time from your town to this city so that we may know just when to expect your remittances.

Your prompt attention will be appreciated.

Very truly yours,

R. HILTON,

Collection Department.

RH:ECS

CC: Ketchikan, Alaska."

(Testimony of Charles M. Tuckett.)

ELECTRICAL RESEARCH PRODUCTS INC.

ACOUSTIC DEPARTMENT

250 West 57th Street, New York City

\$29.75

Statement of account of

W. D. Gross,

c/o Coliseum Theatre,

Sept. 11, 1929

Juneau, Alaska.

249700

Invoice No.

Date	or week ending	Amount	Totals
Dr 04 12 9	9727	5.60	
Dr 05 18 9		29.75	
Dr 05 25 9		29.75	
Dr 06 01 9		29.75	
Dr 06 08 9		29.75	
Dr 06 15 9		29.75	
Dr 06 22 9		29.75	
Dr 06 29 9		29.75	
Dr 09 06 9		29.75	
Dr 07 13 9		29.75	
Dr 07 20 9		29.75	
Dr 07 27 9		29.75	
Dr 08 03 9		29.75	
Dr 08 10 9		29.75	
Dr 08 17 9		29.75	
Dr 08 24 9		29.75	
Dr 08 31 9		29.75	
Dr 09 07 9		29.75	
Dr 09 14 9		29.75	541.10

10 additional weeks @ \$29.75

297.50

838.60

(Testimony of Charles M. Tuckett.)

ELECTRICAL RESEARCH PRODUCTS INC.
ACOUSTIC DEPARTMENT

250 West 57th Street, New York City

\$29.75

[483]

Statement of Account with

Sept. 11, 1929

W. D. Gross,
c/o Coliseum Theatre,
Ketchikan, Alaska.

249600

	Invoice No.		
Date	or week ending	Amount	Totals
Dr 04 12 9	9726	5.60	
Dr 06 01 9		29.75	
Dr 06 08 9		29.75	
Dr 06 15 9		29.75	
Dr 06 22 9		29.75	
Dr 06 29 9		29.75	
Dr 07 06 9		29.75	
Dr 07 13 9		29.75	
Dr 07 20 9		29.75	
Dr 07 27 9		29.75	
Dr 08 03 9		29.75	
Dr 08 10 9		29.75	
Dr 08 17 9		29.75	
Dr 08 24 9		29.75	
Dr 08 31 9		29.75	
Dr 09 07 9		29.75	
Dr 09 14 9		39.75	481.60
10 additional weeks @		29.75	297.50
			779.10''

(Testimony of Charles M. Tuckett.)

Thereupon Witness Tuckett further testified: I never received any statement or letters with respect to service charges before that letter; these four telegrams I now produce were telegrams received from plaintiff and answers to them during 1929.

Whereupon telegrams from plaintiff to defendant dated October 11, 1929, and November 12, 1929, and telegrams from defendant to plaintiff dated October 11, 1929 and November 27, 1929, were received in evidence, marked

DEFENDANT'S EXHIBIT P,

and respectively read:

“El New York NY Oct 11 1929

W D Gross Coliseum Theatre

Juneau

Felt sure my letter of September fifth attaching agreements with regard to service charge would meet with immediate favorable response on your part by executing and returning same together with your check for back dated service charges stop you owe six hundred ninety one dollars thirty five cents for Coliseum Juneau and six hundred thirty dollars thirty-five cents for Coliseum Ketchikan [484] Alaska stop please favor us with these checks at once also return *three* special agreements covering service charge and oblige

Electrical Research Prods. Inc W Dun 225PM

(Testimony of Charles M. Tuckett.)

Oct. 11, 1929

W. Dun

Electrical Research Products Inc.

New York, NY.

In regards to service agreement Mr. Gross has them with him personally and he is on his way east to take matter up with you direct. All your letters etc have been forwarded to him so persume you will hear from him direct or see him in person.

Collect.

Coliseum Theatre

El New York NY Nov 12 1929

Mr. Gross

Mgr Coliseum Theatre Juneau

No reply received letters September twenty fourth stop Coliseum Theatre Juneau in arrears seven hundred fourteen dollars weekly billing and seven dollars and fifty cents merchandise stop Coliseum Ketchikan in arrears seven hundred fourteen dollars weekly billing and eight dollars and sixty cents merchandise stop this constitutes default unless payment received immediately shall avail ourselves of protection provided in contract and refer accounts to legal department

Electrical Research Products Inc

R A. Quinn

922 AM

NL Collect

Nov. 27 1929

R Q Quinn Electrical Research Products

New York NY

As we have wired before Mr Gross either in New York or on way to Seattle he has your letter con-

(Testimony of Charles M. Tuckett.)

tracts wires etc can not do anything on service charges until he okays them have your Seattle representative take this matter up with him when he arrives there around twenty fifth he stops at Atwood Hotel Seattle we have remitted for small items first of month

Collect

Coliseum Theatre. [485]

Thereupon Witness Tuckett further testified: I recognize this check drawn on B. M. Behrend's Bank dated January 1, 1930, for \$301.10. At that time I was acting for defendant's Coliseum Theatre.

Whereupon check dated January 1, 1930, was received in evidence, marked

DEFENDANT'S EXHIBIT Q

and reads:

"No. 74

Juneau, Alaska, Jan. 1, 1930

Pay to the order of Electrical Research
Products 301.10

Three Hundred One Ten Cents.....Dollars

To THE B. M. BEHREND'S BANK

COLISEUM THEATRE

Juneau, Alaska. By Mrs. W. D. Gross, W. D. Gross"

Thereupon Witness Tuckett further testified: I sent this telegram dated February 3, 1930, to plain-

(Testimony of Charles M. Tuckett.)

tiff in Los Angeles in answer to a wire I received from Pearsall.

Thereupon defendant's telegram to plaintiff dated February 3, 1930, was received in evidence, marked

DEFENDANT'S EXHIBIT Q-1,

and reads:

Juneau Alaska Feb. 3, 1930.

R. H. Pearsall

Electrical Research Products Inc.

Los Angeles, Calif.

Check covering your account mailed twenty eighth receipt bill return to Juneau what is the matter we can not get replacements on two three nine tubes we have four coming none arrived yet at present we have no spare on this tube must have spares also we are entitled to more than twenty minutes service per month which is about all we get

Coliseum

Night Letter Collect."

Thereupon Witness Tuckett further testified: That check, defendant's exhibit Q, was for repairs, exciter lights, some more repairs for Ketchikan, some tubes, some exciter lights and some service; when I sent that check I had not heard anything from defendant about what happened in Seattle between him and Gage but before I had paid out this check I had received a letter from him stating he had signed for service; I had received bills dated

(Testimony of Charles M. Tuckett.)

December 31, 1929, after the first of January, 1930, and I included [486] service charges in that check for January, 1930, because I figured after I read defendant's letter that we had to pay service charges so when I drew the check for the amount of the parts I added it into the check, making \$119.00 for each house; I actually made out that check after Mrs. Gross came home about January 20; defendant was not in Juneau; he arrived some time in February; the check is signed by Mrs. Gross because I had run out of signed checks that defendant left me so I took it up to her and had her sign it, which was my custom when I was out of checks and defendant wasn't in town, then Mrs. Gross had authority to sign checks; while the check bears date of January 1, 1930, that was not the date she signed it; it was actually made out January 20; it was dated January 1 because I made out checks for all the bills for December that were payable and dated them all January 1 after Mrs. Gross returned; the only thing I knew then about the service charges was that Gross had signed for service; I had authority from Gross to draw this check only for parts but no authority to pay service charges, but paid them on my own hook; when the equipment got out of repair that I couldn't fix myself, I sent it to Seattle to plaintiff, who repaired it and charged it to us, which happened three or four times; I know of two times which show on these four bills.

(Testimony of Charles M. Tuckett.)

Whereupon two bills were introduced in evidence marked

DEFENDANT'S EXHIBIT R,

and read:

“ELECTRICAL RESEARCH PRODUCTS INC.
ACOUSTIC DEPARTMENT
250 West 57th St., New York

Contract No.	Refer to	
Customer's	Invoice No.	105452
Order No.		
Requisition No	InvoiceDate	Dec. 31, 1929

COLISEUM THEATRE
119 FRONT ST.
JUNEAU, ALASKA

COLISEUM THEATRE
405 MISSION ST.
KETCHIKAN, ALASKA

[487]

How shipped and	Serve. Eng.	
route	Seattle Emerg. Stock	62-1701

Repairs on the following

1-A Aperture	16.00
555-W Receiver	\$20.00

Sdo. 48675 Signed by L. C. Lemieux

(Testimony of Charles M. Tuckett.)

ELECTRICAL RESEARCH PRODUCTS INC.
 ACOUSTIC DEPARTMENT
 250 West 57th St., New York

Contract No.	Refer to
Customer's	Invoice No. 105625
Order No.	
Requisition No.	Invoice Date 12/31/29

COLISEUM THEATRE,
 JUNEAU, ALASKA

Shipped to same
 & destination

Date shipped

How shipped & Mail F.O.B. Seattle-Emer-Stock
 route 62-1776

Repairs on the following

1 4-A Reproducer	4.50
SCO 56437 Signed by Chas. M. Tuckett"	

Thereupon Witness Tuckett further testified: The first bill is for repairs on a 555-W receiver and new aperture plate, I think plaintiff put in, the second bill is repairs on a 4-A reproducer, which was used in connection with the sound equipment and which was sent to Seattle for repairs as we couldn't get it repaired here and the service man advised us to send them to Seattle; he either couldn't or didn't repair them; I identify this check you hand me.

(Testimony of Charles M. Tuckett.)

Thereupon check was received in evidence, marked

DEFENDANT'S EXHIBIT S,

and reads: [488]

“No. 59

Juneau, Alaska, Nov. 1 1930

Pay to the order of Elec Research Products \$500.00
Five Hundred Dollars Only.....Dollars
To THE B. M. BEHREND'S BANK

Juneau, Alaska

ALASKA FILM EXCHANGE

By W. D. GROSS Manager”

Witness Tuckett further testified: I sent that check to plaintiff; this letter addressed to defendant from Mott Vallee and Grant was received in due course in the mail.

Whereupon letter to defendant, dated October 23, 1930, from Mott, Vallee and Grant was received in evidence, marked

DEFENDANT'S EXHIBIT S-1,

and reads:

“Law Offices

MOTT, VALLEE AND GRANT

Suite 1215 Citizens National Bank Bldg.

Los Angeles

October 23, 1930.

Mr. W. D. Gross,
c/o Coliseum Theatre,
Juneau, Alaska.

Dear Sir:

Our client, Electrical Research Products, Inc., has placed in our hands for immediate action the

(Testimony of Charles M. Tuckett.)

matter of your delinquency under license agreement of March 28, 1929, covering the Western Electric sound equipment installed in your theatres.

The delinquency against your Coliseum Theatre at Juneau, amounts to \$797.94, and that of the Coliseum Theatre at Ketchikan to \$840.00, or a total of \$1638.58, as of September 27, 1930.

It is imperative that this delinquency be taken care of at once, or some suitable arrangement for its payment made with us; otherwise, we are instructed to take immediate steps to disconnect your equipment and collect the indebtedness.

Kindly communicate with us at once.

KEG:H

Yours very truly,

(Signed) K. E. GRANT

for

Mott, Vallee & Grant.

(Pencil notation:—Soon as Mr. Gross arrives we will forward a check to the company 500.00 the full amount will be remitted as soon as we can take care of it as biz bad.)”

Thereupon Witness Tuckett further testified: This letter dated November 20, 1930, is my reply to that letter from Mott Vallee and Grant.

Whereupon defendant's letter signed by Tuckett, addressed [489] to Mott, Vallee and Grant was received in evidence, marked

DEFENDANT'S EXHIBIT S-2,

and reads:

(Testimony of Charles M. Tuckett.)

“Nov. 10, 1930

Mott, Valee and Grant
Law Offices
Los Angeles, Calif.

Gentlemen:

Your letter of Oct. 23 received and in regards to the amount we owe the Electrical Research Products will state.

That we have already forwarded them a check for the amount of \$500.00 in part payment of this account. The balance we will take care of just as soon as it is possible.

We wish that you would take up with these people in regards to their service and the amount that we have to pay for same. In the first place the service charge is very much too high for the amount of business that we are doing and the second place their service is far from being satisfactory.

We have taken this matter up with them before but to date they have failed to reply to same.

Hoping that this will be settled satisfactory to both partys I remain,

Very truly yours,

C

Mgr.”

Thereupon Witness Tuckett further testified: I recognize plaintiff's exhibit No. 38 (letter from defendant to plaintiff dated November 1, 1930); a check for \$500.00 was sent by defendant with that letter, plaintiff's exhibit No. 38; we received the

(Testimony of Charles M. Tuckett.)

letter from Mott Vallee and Grant (exhibit S-1), when defendant was in Juneau and we talked it over pro and con, noticed the service charges were going up; there was nothing we could do; thought defendant would have to go outside to straighten it up, so decided to send a check to plaintiff and not to Mott, Vallee and Grant because we didn't want them to have the habit of having to send the check to the attorney, we wanted to stall them off for time until defendant could go out and straighten up the account and see if we couldn't come to some arrangement with these people; the letter from Mott Vallee and Grant had something to do with our decision, he said he was going to disconnect our equipment; this was the [490] climax of it all; we had wires from plaintiff all summer and fall; we wanted to stall them off; I would not have sent that \$500.00 but for the threat in the letters; I believed they would execute the threat; I sent the \$500.00 because I believed they would disconnect the equipment, these guys, and I didn't want to take any chances of the equipment being disconnected, wanted to try to straighten this matter up, so we sent the check November 1st. Defendant wrote them a letter and on the 10th of the month after the check come around we had already sent the check. Defendant agreed to that procedure; he was going out as soon as he could, he had other business to look after in Alaska; I made a notation on that letter as defendant and I were talking. It just says "as soon as Mr. Gross arrives will for-

(Testimony of Charles M. Tuckett.)

ward check for \$500.00;" that was just a stall again so Gross could go down and get some action; defendant's letter tells of hard times and bad business, we didn't have bad times at that time but we put it in the letter because we always claim we have hard times when we ask for a reduction; the real reason we put it in the letter was just as a stall; this all happened in the fall of 1930.

In the spring of 1931 Attorney Robertson got the account; I don't think defendant had gone below before that time; I don't think he was able to, he was busy with other matters; after Robertson got the account he wrote a letter or called up, I forget which, and asked us what we were going to do with it; I tried to reason with Robertson and he said it was due and he was going to collect it; I tried to stall him off; don't remember just what I did; I still wanted time and figured when Gross got to Seattle he could straighten it out and at last Robertson filed suit for service charges and attached defendant's box offices both in Juneau and Ketchikan; we put up a bond and then Robertson either called or wrote Gross a letter and at that time I think he asked Gross to go up, but in place of Gross going up, I went up and had a talk with him and asked him why he didn't come up and ask me, that I [491] would put a bond up; instead of that Robertson told me right out he was going to collect that \$1600.00 or take the equipment out, he was through monkeying with Gross.

(Testimony of Charles M. Tuckett.)

This paper, defendant's exhibit A for identification, is the paper Ralph Lawrence handed me a little bit later, that night, during the show; I don't remember the exact date, but it was after the bond was put up.

Thereupon paper was received in evidence, marked

DEFENDANT'S EXHIBIT A,

and reads:

“On behalf of the Electrical Research Products, I hereby notify you that W. D. Gross has defaulted in the license agreement relative to the Western Electric Company Sound Reproducing Instrument now in this theatre and that under that agreement the Electrical Research Products is entitled to disconnect said instrument and to render the equipment thereof inoperative, and, on behalf of the Electrical Research Products, I hereby make demand upon you for immediate admission to said instrument for the purpose of disconnecting it and rendering its equipment inoperative.”

Thereupon Witness Tuckett further testified: After I left Robertson's office I went over and told Gross we had stalled this thing off as long as we could and he was going to take the equipment and the best thing Gross could do was to go to Seattle

(Testimony of Charles M. Tuckett.)

and get the best equipment he could and get it right away and he left on the steamer Rogers for Seattle. I next saw defendant [492] when he returned; he brought the equipment with him; immediately after he returned, we received the replevin from Marshal White, who brought it with his two deputies; they served the papers on Gross, he called up Si Hellenthal and told him to come up; then we walked up to the booth; in the meantime Robertson arrived there about practically the same time as Si Hellenthal and we argued quite a bit, sitting in the seats and arguing about it; we asked him for more time; we wanted more time to put up equivalent amount of bond so we could read the papers and go get legal advice on it; after arguing a while Robertson said, "I am not going to wait any longer. I am through fooling with your people. Pull it out. Pull the equipment out."; then White asked me to open the door and I refused and he told one of his deputies to get a crowbar; I asked him if he was going to bust it, and he said yes, and then I opened it and Lawrence started to disassemble the equipment and take out all spare parts, photo electric cell, make the machine so you couldn't operate.

Whereupon the following proceedings took place:

"Q. To what extent did Mr. Lawrence go, to, at that time, or immediately after that, in dismantling the equipment?"

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

The COURT: He may answer.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: Exception.

A. He started on the amplifier and started to dismantel and take it down. We started to work and taken off our own equipment which is the lamp house there and the upper magazine and your machine head under the projector head.

Q. To what extent was the equipment finally dismantled?

A. Clear down to the main base.”

Thereupon Witness Tuckett further testified: I couldn't put it together after that, neither could defendant nor anyone but Lawrence; we didn't have a blueprint, the thing was entirely useless so far as we were concerned; I don't think Gross said anything [493] about throwing the equipment in the bay; I might have said it; it is a common remark of mine; nothing serious about it; just a mere statement that I should have thrown it in the bay.

This bundle of papers, now handed me, contains the bills covering the cost of the new equipment defendant bought; the equipment he brought up from Seattle at the time the Western Electric equipment was taken out under the replevin suit.

Thereupon defendant offered in evidence defendant's exhibit T for identification, to which plaintiff objected on the ground it was incompetent, irrelevant, and immaterial and had nothing to do with the true measure of damages in this action, which objection was overruled, to which plaintiff then ex-

(Testimony of Charles M. Tuckett.)

cepted. The papers were then received in evidence, marked

DEFENDANT'S EXHIBIT T,

and contain a list of itemized bills and invoices, together with the following tabulated statement thereof, viz:

“Tabulation of cost of installation of new equipment in Coliseum theatre at Juneau, and Coliseum theatre at Ketchikan, April 1931:

UNIVERSAL HIGH POWER

Paid for machines.....	\$3,885.19
2 Pre-amplifiers and parts.....	1,000.00
Installation costs	372.65
	<hr/>
Total.....	\$5,257.84

one half of which defendant and his witness Tuckett testified applied to the Juneau theatre, and one-half to the Ketchikan theatre. [494]

Thereupon Witness Tuckett further testified: Defendant's exhibit T shows the cost of the two equipments defendant brought up for Juneau and Ketchikan to take the place of the replevined equipments; they cost \$3,338.19—two pre-amplifiers and parts \$1,000.00, installation cost \$372.65, total \$5,257.84, divided equally between the two machines so that each cost one-half thereof.

Thereupon the following proceedings took place:

(Testimony of Charles M. Tuckett.)

“Q. Mr. Tuckett, how did the sound of these new machines compare with the sound of the Western Electric machines that had been re-plevined?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial, no foundation laid.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. There is no comparison in the two.”

Thereupon Witness Tuckett further testified: By no comparison I mean the quality was far greater in the Western Electric very much better than in the other; we got those two pre-amplifiers for which we paid \$500.00 apiece to try and improve on it after the original installation, but they caused us more trouble than before and we were never able to improve that equipment to make it as efficient as the other.

Cross Examination.

Thereupon Witness Tuckett further testified: In Direct Examination I did not read all of the pencil notation at the bottom of the letter (defendant's exhibit S-1) that Mott Vallee and Grant wrote to defendant, because it didn't pertain to it all; the whole of that notation reads:

“As soon as Mr. Gross arrives, will forward a check to your Company for \$500.00, the full amount will be remitted as soon as we can take care of it as business is bad,”

(Testimony of Charles M. Tuckett.)

which statement was not true but was false; defendant signed the letter dated November 1, 1930, (plaintiff's exhibit No. 38); the statement in his letter of November 1, 1930, that [495]

“Just as soon as business picks up a little and I am able I will again remit to you. As it is now business is very bad and we are hardly ever out of the red,”

is false, not a true statement; it was a stall.

I was more or less of a general manager for Gross, having charge generally of all of his affairs when he was away from Alaska and, if he was away from Juneau, then I had general charge of his affairs in Juneau until he got back or until I could get in touch with him and if he was entirely out of Alaska I had charge of all of his business.

I don't know where the letter now is that defendant wrote to me before I made out the check, signed by Mrs. Gross, dated January 1, 1930, defendant's exhibit S; I last saw that letter about a month after I received it; I received the intimation from it that defendant had arranged to pay service charges and upon the strength of that intimation I prepared that check and had Mrs. Gross sign it; I never heard anything to the contrary until defendant got back some time in February, 1930, and happened to take over his business, that is the first time I ever heard anything about defendant's signing those letters (plaintiff's exhibits Nos. 2 and 4) under any threat; he made no mention of that in his letter to me;

(Testimony of Charles M. Tuckett.)

I had the privilege of drawing checks on defendant's account without his authority; he left the checks with me and I had the privilege of filling them in and giving them out; if he was out of town I could have the checks O.K.'ed by Witness Mullen or Mrs. Gross; I didn't draw any checks other than under that authority; he didn't authorize me to draw each individual check; if I said it was O. K. I drew a check for it and defendant didn't question the matter; he never questioned my drawing a single one of these checks; there was no limit to my authority to draw checks.

The day the equipment was replevined I heard the statement made there then to throw the stuff in the bay; to my recollection I made the statement; not defendant; I am positive Lawrence [496] served upon me that demand, defendant's Exhibit A; Witness Monagle might have been there; I didn't pay any attention to whether Witness Monagle personally served the demand upon me, it didn't mean anything to me; I don't think Attorney Robertson came there with two deputies in the first place; he did not attempt to knock down the door; I remember he said he was through fooling with us and to get the equipment out: Si Hellenthal, Witness Clayton, myself, White, Martin, and Newcomb were present when he made that statement which was outside the booth on the balcony; I don't remember any other exact words that Robertson said except we wasn't going to have any more time and he told Mar-

(Testimony of Charles M. Tuckett.)

shal White to jerk out the equipment; he didn't tell Marshal White that he had a valid writ in his hands and as the United States Marshal, it was up to him to do what he wanted to do with it, and then turned around and walk out; I am positive Robertson didn't do that.

I had a conversation with Robertson in his office after he filed suit for the service charges; I really don't know whether we had a conversation before that, I think we did; I had been to his office and promised to pay the account; I promised to send a check down for it; and subsequently promised to give him a check for \$500.00 on account; at that time I said nothing to him about making such payment under protest; I don't remember whether at that time I told him anything about service charges or that there were no service charges honestly due; I never had any authority to actually sign a check for defendant but I had authority to draw one, but my signature was not good on a check; I wouldn't say that the reason why I didn't pay Robertson at that time was because I had no signed checks.

Gross went East some time in September, 1929, I don't remember the exact date; he didn't take or have with him those contracts, plaintiff's exhibits Nos. 2 and 4; we had no bills about service charges up to the time of his departure; when I made the statement, "Mr. Gross has them with him personally and he is on his way East to take the matter up with you direct." In the telegram [497] dated October 11, 1929, one of the telegrams included in

(Testimony of Charles M. Tuckett.)

defendant's exhibit P, I meant I had sent the contracts to defendant and presumed that he had received the letter, and believed he had them with him, until the letter was returned; I sent them to him and it turned out afterwards they had followed him all over the country; that is also true of the statement made by me in the telegram of November 27, 1929, another telegram that is part of defendant's exhibit P; I figured he had them with him somewhere; I got them back here around in January some time; I never got them back until the post office returned them; defendant left forwarding addresses in each place.

When I commenced to operate the talkie sound equipment I had the original Western Electric book, also Richardson's Handbook and I have two or three other books in my library in Portland; my main one was Richardson's, then this little bulletin book that plaintiff had out at first; I studied Richardson's article in the Herald World dealing with sound; I read these other books but I don't remember their names; I used them mostly as reference; they are now in Portland, Oregon; they were published about 1929 or 1930.

I am familiar with defendant's exhibits H-1 to H-7, both inclusive; some of the original entries therein were made by me and some by defendant; the checks out of defendant's exhibits H-6 and H-7 were drawn on the Miners & Merchants Bank in Ketchikan, but the books were kept in Juneau;

(Testimony of Charles M. Tuckett.)

defendant kept only one bank account in Ketchikan in connection with his Coliseum business there; that is that only bank account he had there; in Juneau defendant did business with The B. M. Behrends Bank and carried three accounts, keeping his Sitka Theatre separate, also having an account in the Behrends Bank for the Alaska Film Exchange, which are exhibits H-1 and H-4; all checks of which entries were made in exhibits H-1 and H-4, were drawn on the bank account of the Alaska Film Exchange in Behrends Bank in Juneau, and all checks referred to in defendant's [498] exhibits H-2, H-3 and H-5, were drawn on the Coliseum Theatre account in the Behrends Bank in Juneau.

There are the only records defendant has—these books, defendant's exhibits H-1 to H-7, both inclusive; defendant also had bank deposit books which I saw, but concerning which you would have to ask defendant; they were just a matter of form in the records of his business as we used duplicate deposit slips, which are still on file and which we have for some years, but we haven't a full complete line of them because they were destroyed after the figures were checked; I couldn't say whether the bank books themselves were destroyed.

It was the custom during the time I was connected with defendant's two theatres to keep a daily record of admission in those theatres, which was kept on a daily report, so many admissions for a certain price and then the total, which statements

(Testimony of Charles M. Tuckett.)

have been destroyed; we didn't keep them after they had once been checked, and checked by the Government; so we could have both records here, whoever was in charge in Ketchikan would forward the daily statements to Juneau, and in addition to the daily statements there was a duplicate deposit slip for the money taken in; in 1929 at one time we had all those for the Juneau and Ketchikan theatres in Juneau, all of which were destroyed right away after Clauson, tax income man, had checked the past years, including 1929 and I think 1930; for 1930 whoever was in charge in Ketchikan sent all of those returns of the Ketchikan Theatre to Juneau but I couldn't say when they were destroyed, not for some time afterwards; we usually held them around a year; the 1930 income tax return wasn't settled by the income tax collector for some time but I don't remember when; it took considerable time for both the 1929 and 1930 returns; defendant made his 1931 return around March 15, 1932; I think all those returns were destroyed just before I quit about May 1, 1933; I cleaned up a lot of stuff at that time; defendant had similar returns for the Juneau Theatre for 1931, 1932, and the first four [499] months of 1933; neither 1933, nor 1932 had been destroyed.

Since I came here on this case I have made my headquarters in defendant's office but I haven't seen those returns around; they were the records of defendant's moving picture business at Juneau and

(Testimony of Charles M. Tuckett.)

Ketchikan; after defendant once checked them they were no good to him; just used the money deposited in the bank; I couldn't say whether all those records, except 1929, were destroyed after April 20, 1931.

Defendant's exhibits Series I, J, Series K, and L, were all prepared by Witness Stabler and me; I told Stabler the accounts and he tabulated them; the only thing I had to do with it was to segregate the expenses of the theatres; I know they are correct as far as I can possibly get them correct; all the data shown on those exhibits is contained in those seven books, defendant's exhibits H-1 to H-7, inclusive; there is no data in those exhibits taken from any other source than defendant's exhibits H-1 to H-7, both inclusive, except capitol investment which was taken off the income tax returns; but for all the rest, every item in there, there is a check in one of those books to cover it; the summaries, defendant's exhibits Series I and K that I read to the jury, those receipts are reflected in the particular check book here that covers the particular period that I read, and the disbursements are all reflected in that book, in other words, these summaries are simply the total aggregate for the month shown in that particular check book; in the Juneau account the Alaska Film Exchange had at one time or other deposited money to the Coliseum Theatre, for instance here in defendant's exhibit H-2, on April 18, 1929, \$2,000.00 was deposited to the Alaska

(Testimony of Charles M. Tuckett.)

Film Exchange by The B. M. Behrend's Bank; when I prepared the statement, in defendant's exhibit Series K, of Juneau for April, 1929, those accounts were not taken into consideration at all; the only consideration we had was of the actual deposit the theatre made; I am now speaking of \$200.00 that defendant got on a note at the B. M. Behrend's Bank and deposited to the [500] Coliseum account; neither it nor the \$2,000.00 note I spoke of was taken into consideration in the receipts, for instance, that \$2,000.00 appears in the distribution for April, 1929, in exhibit H-2, but not in the figures of the receipts which are on the left; for instance, April 4, \$104.80, on the 6th, \$101.10, those are the actual receipts; each account in those exhibits H-1 to H-7, both inclusive, if there is a check there I know personally what it is and I can explain each individual check; for instance on exhibits Series I and K, we have listed amounts of checks with names and everything; the only thing that would be in dispute would be those we omitted; the receipts can be checked by either adding the figures on the side of say exhibit H-5, or turning to the distribution where it gives the exact receipts for the month, which have been checked and rechecked; at the top is receipts for the month, which would be checked from the daily deposits.

The distribution in the check books, H-1 to H-7, both inclusive, doesn't necessarily cover all the de-

(Testimony of Charles M. Tuckett.)

posits entered in the books; there are no deposits in defendant's exhibit H other than actual theatre deposits; in exhibits H-1 to H-7, are deposits made from other sources and receipts from admission to the Gross Coliseum Theatres; we have taken money from the Alaska Film Exchange and put it into the Coliseum in one of them, which happened quite frequently in 1929 and 1930, but no credit was given any place for that here, or in any ledger or journal; that money was turned over to the Coliseum Theatre because of shortage; checks were drawn in the Coliseum Theatre, there was money in the Alaska Film Exchange, so we transferred the account; that happened because defendant drew exceedingly heavy on them; from the Juneau Theatre account he paid more than the theatre expenses; the Juneau and Ketchikan Theatres had sources of revenue other than receipts in the box office, for instance, they had the Alaska Film Exchange which put money into these accounts and at different times we put money into them from Petersburg and Wrangell; that wasn't part of the earnings [501] of either of those theatres, but it wasn't taken into account in making up the total or monthly receipts shown by exhibits Series I, J, Series K, and L; those are the actual receipts and include all the earnings of the theatres, which we received from the box office; in exhibits H-1 to H-7, both inclusive, these figures checked are the ones considered in the statement, Series I and K; those with an "X" are considered

(Testimony of Charles M. Tuckett.)

not in the statement; every thing is admissions to theatres except those marked "B. M. B.", I should imagine some are marked Alaska Film Exchange; those did not come from admissions to theatres; any deposits from the Petersburg, Sitka, Wrangell, Douglas, or Haines Theatres are designated so as to show from what they came; the only way a person can check the disbursements from these exhibits H-1 to H-7, both inclusive, against the statements, Series I and K, to know what disbursements I have included as expenses, is that I have checked those that we entered; the check marks are the ones we included in the statement, the X marks are the ones excluded; this item of \$2,075.60, receipts for the month of September, 1931, (shown in exhibit H-3) was a retabulation, defendant's figures were very bad—we had to retabulate everything; every time you see a blue X up here on the book you will have to correct it; that book entry of \$2,845.00 is incorrect and I used \$2,765.06; receipts for July, 1932, Juneau theatre, \$1,984.24 is the same total as with those marked "J"; this item \$80.00 (in defendant's exhibit H-3, under date of July 6, 1932) marked J. D. was for something else, doesn't have anything to do with the actual receipts of the theatres; I can't explain how anyone else could check these books; if I don't know it myself, I couldn't explain it to you; it is a thing you can't explain; you just have to know the system; the only way I could make these summaries, defendant's

(Testimony of Charles M. Tuckett.)

exhibit Series I and K, is from my memory, going through it at this time, all but the receipts, the receipts have been rechecked; the only thing I relied on my memory for was [502] anything that didn't check; I really could remember; that item of \$80.00 spoken of—the way I know it wasn't a receipt was we had all the papers on this data at the office; I don't remember every individual item of those five thousand numbers; I can't tell you but we did arrive at the figures of receipts; the receipts are the actual receipts from the theatres; the papers and data that we had were the income tax receipts, bank statements, if possible; I would have to look up to see if we have the bank statements now; I will produce what I can of them; we also had the income tax returns; I don't remember exactly what other papers we did have.

Redirect Examination.

Thereupon Witness Tuckett further testified: These three books, now produced, are the bank books of the Coliseum Theatre with The B. M. Behrends Bank, and The Miners & Merchant Bank, respectively.

Whereupon three bank books were offered in evidence, to which plaintiff objected on the ground they were incompetent, irrelevant, and immaterial, and not the true measure of damages, which objection was overruled, and to which ruling plaintiff then excepted.

(Testimony of Charles M. Tuckett.)

Whereupon said bank books were received in evidence and marked as follows: defendant's bank deposit book Behrends Bank, Juneau, from April 29, 1928 to October 6, 1932, defendant's exhibit U; defendant's bank deposit book Miners & Merchants Bank, Ketchikan, from January 2, 1931 to May 2, 1933, defendant's exhibit U-1; defendant's bank deposit book Behrend Bank, Juneau, from October 6, 1932, to August 14, 1933, defendant's exhibit U-2.

Whereupon Witness Tuckett further testified: Those are the only three books I could find with the business at the present time; this large bundle of papers contains all the bank statements and checks covering the entire period from 1929 to May, 1933, including defendant's personal business and also other business; by per- [503] sonal knowledge I could tell what these checks are; the checks are all here to back up the expenditures I have testified to, except one or two possibly which have been offered separately.

Whereupon the following proceedings were had:

Mr. HELLENTHAL: There is a great bundle of stuff, I don't like to encumber the record with; it would mean the introduction of probably thousands of exhibits unless we fastened them together in some way or other.

I don't know what to do with them. I will offer the whole batch in evidence as one exhibit, have them fastened together some way—put in a box or something.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: We would have liked to have an opportunity to check them over . . . We don't care to have them go in particularly, but I will make a formal objection at this time.

Mr. HELLENTHAL: I am perfectly willing counsel have them and check them over and am willing to let him do that after they are received in evidence. However this witness—(Tuckett) is probably the only person entirely familiar with the checks and what they belong to who can explain which is which, and this witness expects to leave Sunday on the "Northland" so I suggest counsel make an examination, and if he wishes to cross-examine about these checks to look them over as speedily as possible. This witness is expecting to leave for Portland on the "Northland". I make this statement in advance so counsel will know the situation. If counsel objects to the checks—did counsel make an objection?

Mr. ROBERTSON: Just a formal objection at this time.

Mr. HELLENTHAL: If counsel makes objection to their reception in evidence then I will turn the checks over to them. Let the record show they were offered and presented in court so counsel might examine this witness on them to determine whether his accounts are correct as he presented them.

Mr. ROBERTSON: Of course it would be humanly impossible for me or anyone to check

(Testimony of Charles M. Tuckett.)

them in a few moments—to bring them in just before I start the examination of Mr. Tuckett is of no benefit to us. I couldn't possibly check them at this time.

Mr. HELLENTHAL: Under the circumstances I will offer them in evidence.

Mr. ROBERTSON: I just make the same formal objection at this time, Your Honor. Of course, Your Honor, we feel we have been trying to get the records here for a period of more than two weeks, and now when Mr. Tuckett is anxious to get away, starting on the cross examination, is the first time we have ever had a chance to look at these particular records. It wasn't until yesterday afternoon that Mr. Tuckett finally admitted on the witness stand that they were even in existence. [504]

The COURT: Wouldn't it simplify matters if it can be understood between counsel that that bundle of checks which has been offered in evidence simply be left here for the use of counsel on both sides for examination without introducing them in evidence?

Mr. HELLENTHAL: I think that is the better way.

The COURT: And simply introduce such parts as you want to introduce as supporting or contradicting the record as already in.

Mr. ROBERTSON: That is all right. I don't want to preclude myself at this time by

(Testimony of Charles M. Tuckett.)

saying we could possibly get through cross-examining Mr. Tuckett on these checks today if that is gone into. But that is agreeable to me.

The COURT: Very well, the offer of these checks in evidence will be excluded with that understanding. They will be left here on the condition I just mentioned.

Mr. HELLENTHAL: Let the record show all the checks and bank statements have been turned over to counsel for the plaintiff for his examination and study and for such use as he may desire to make of them.

Mr. ROBERTSON: I don't want to be technical about the statement, but I understand they are left in the [505] custody of the court for either party to use.

The COURT: That is the understanding.

Mr. HELLENTHAL: That is all right.

Q. Here are a lot of other papers, Mr. Tuckett, purporting to be daily and monthly reports relating to those theatres. Look at that bundle and state what that is.

A. These are the daily reports and deposit slips from Ketchikan.

Q. What is the other bunch?

A. These are some of the weekly reports from both Ketchikan and Juneau.

Q. Covering portions of the period we are inquiring into?

A. Yes.

(Testimony of Charles M. Tuckett.)

Q. But not the entire portion?

A. No.

Q. Are these all the slips you could find?

Thereupon Witness Tuckett further testified: I think we found a few more slips last night after digging around but I can't tell for sure whether they are all here; there are hundreds of them; they cover only a portion of the time; everything figured in our work sheets, defendant's exhibits Series I, J, Series K, and L was taken from the check register books, defendant's exhibits H-1 to H-7, both inclusive, they are the only books from which I worked; they contain everything that these checks and other statements contain; the check register is the master book of all this stuff; its the book of original entry; we take all these reports and compile them as they come in each week in this book; they come in from the towns; we take the figures from the slips and enter them in the book; at the end of the month the check register is rechecked with the bank statement; the bank statement would have to correspond with the check book; the check register contains everything that is in the bank statements; all these things are carried on to my work sheets in so far as they pertain to the Juneau and Ketchikan theatres; this bundle of papers embodies all the checks, [506] reports, and stuff of that kind I could find; everything in defendant's office that has not been misplaced or destroyed; I made a thorough search; there is no ledger showing

(Testimony of Charles M. Tuckett.)

any transactions in connection with these two theatres; no ledger showing expenses paid out or receipts of the two theatres; they would all show in the check registers offered in evidence and there is no ledger having any bearing on it.

Whereupon bundle containing several thousand slips, checks, etc., was marked

DEFENDANT'S EXHIBIT X

for identification.

Thereupon Witness Tuckett testified: All the information shown on this bundle of checks and statements marked for identification defendant's exhibit X is shown in these check registers, defendant's exhibits H-1 to H-7, both inclusive; the daily or weekly reports show the number of admissions; these exhibits H-1 to H-7, both inclusive, don't show the daily admissions to each theatre; as a matter of fact they don't show all the information contained in these statements included in defendant's exhibit X for identification; they only show the deposits; in preparing these exhibits Series I and K, we checked back over some of these checks included in defendant's exhibit X for identification, but I really couldn't give you any idea of how many; I couldn't tell you how many checks there are in that bundle, but not less than one thousand; I couldn't tell you how many of those checks included in defendant's exhibit X for identification, I used in making out the work sheets, defendant's exhibits Series I and K; I knew about some but not all of these check

(Testimony of Charles M. Tuckett.)

vouchers all the time I was preparing those exhibits Series I and K; I don't know what percentage I had of them, I paid no attention to it; all I can say is I had some of them; I was not mistaken when I said yesterday that all these other records had been destroyed as soon as the Collector of Internal Revenue had accepted the income tax returns; these are just the bank records; the records I was referring to were daily records of the theatre deposits on the daily records, as I explained yesterday the manager might not deposit every day in the bank, he might take two or three days and make a deposit for those three days; that is the figure we base our things all on, the amount of money deposited in the bank; some of those statements in defendant's exhibit X for identification do include the number of people admitted; those books, defendant's exhibits H-1 to H-7, are check books, a register of the checks. The check distri- [508] bution of expense for May, 1929, defendant's exhibit H-2 is \$3,704.40, which is the amount of checks paid out for that month; this figure at the bottom of that page is the amount of checks that was paid, where I say "Paid out, month of May, 1929, \$3,704.40;" I really don't know whether that is the same as the total of the checks listed in the book for the month of May, 1929, I paid no attention to it, that is defendant's tabulation; the only thing I did is to check it with the bank statement, which shows \$3,704.40 paid; I know that book is correct with all the checks paid, but I

(Testimony of Charles M. Tuckett.)

don't really know whether that book is correct or incorrect.

For October, 1929, defendant's exhibit H-2 shows paid out for that month \$6,825.10; I presume that the actual total, for that month, of the checks shown there with the outstanding checks, would be \$7,092.97; I mean that the amounts marked as "paid out" in that book are only the amounts of the checks returned at that time, that is my explanation of the difference between that amount and the amount of the added checks; the "amount paid out" doesn't signify the amount of checks drawn in the book; neither \$6,825.10 nor \$7,092.97 represents the amount paid for expenses of the Juneau Coliseum Theatre for October, 1929.

On defendant's exhibit "K-1" I reported as expenses of that theatre for that month, not the \$6000 or \$7000 item, but \$4,020.55, and the difference between that amount and those other two amounts is entirely a matter of elimination based entirely upon my personal knowledge of what should be eliminated except for the film checks, as this \$4,020.55 was the film rental coming out of the Alaska Film Exchange; I haven't seen those books, defendant's exhibits H-1 to H-7, both inclusive, since I left defendant's employ over a year ago; I wouldn't have to go back and check each check in order to see whether or not that \$3,000.00 would be included, because I know from long years of experience what the [509] actual

(Testimony of Charles M. Tuckett.)

theatre expenses can be; there is only certain things you can use or put in a theatre, only certain expenses to a theatre that can occur; I based these summarized work sheets (defendant's exhibits Series I and K) on the fact that I know what can occur in theatres and not on the specific items as incurred; but, if it didn't look as though it belonged to the theatre, I looked it up in the checks I mentioned; if it belonged we put it in, if not, we excluded it; Witness Stabler and myself looked it up; I didn't draw all those checks; if we had an individual item about which there was any doubt, we looked it up; if there was any doubt about it we excluded it; I couldn't give a single item where I excluded any doubtful item; I couldn't remember a single one; nobody does when they are working; I really don't know whether in my summaries, Series I and K, I put in only those I checkmarked with a lead pencil on those books; it was just to help you that I told books defendant's exhibits H-1 to H-7 where there are neither checks nor cross marks.

This form at the top of the page where it is ruled off like a ledger or journal form for the month of January, 1929 in defendant's exhibit H-5 is intended to show the distribution of the checks as to the various kinds of expenses; the total shown there for January, 1929, is \$2,330.61 which is correct; I guess that the total adding those columns across is

(Testimony of Charles M. Tuckett.)

\$2,450.45, the difference is taken up by outstanding checks but there is nothing in that book that allows for the outstanding checks; the figure \$2,330.61 will correspond to the bank statement of the checks the bank paid; those columns don't actually add up to the amount of checks actually paid out but the next month will take care of some of those checks; defendant carried no record of outstanding checks.

The total shown as paid out for February, 1929, in defendant's exhibit H-5 is \$3,412.93; I didn't add the checks actually drawn that month but I guess they amount to \$4,445.13; I couldn't [510] tell you the total check distribution shown for that month of expenses; it isn't marked down there, that is the amount of checks paid by the bank only; these pages, sort of lined off like in columns, are intended to cover the distribution of expenses for the particular month in question, but, as I explained before, the Juneau Coliseum book here covers lots more than the Coliseum theatre alone; I have to segregate the theatre expenses; the total of the expenses shown as distributed there is not the same as the total [511] shown at the foot of the page as paid out; that distribution is nothing more than defendant's deductions when he makes up his income tax return; it is for his convenience only; we used it as a basis for his income tax; it had nothing to do with the theatre, only for defendant so he could understand how he paid his money out; included in that distribution is Juneau Dairy \$6.50, Butler Mauro, San

(Testimony of Charles M. Tuckett.)

Francisco Bakery—we know that cannot be for the theatre; the reason the amount of expense distribution does not equal the same as the total checks drawn is that defendant had a habit of giving his checks from the first to the last of the month; there was always an enormous amount of outstanding checks but he never considered them at all; the total amount of expense distribution didn't equal the total amount of checks he drew for the month because the money paid out was nothing more than the total amount of checks that went to the bank; defendant drew plenty of checks but they were outstanding, couldn't have arrived at a balance; that expense distribution was made at the end of the month and he didn't include his outstanding checks; he included them in the month he drew the check; we got the bank statement around the first of the month.

In defendant's exhibit K-1 I used as expenses, \$2,046.36, and there could be a differential of around \$2,500.00 from the total amount of the checks drawn, and a differential of around \$1,400.00 from the amount on that very page shown as the amount paid out, also a difference of about \$1,430.00 from the total of that expense distribution amounts to; I have a check right here for \$1,130.00 for plaintiff that isn't included in my statement, that accounts for a lot of it; I didn't check each one of those items during that month when making up my work sheets, defendant's exhibits K and K-1, because I knew

(Testimony of Charles M. Tuckett.)

Electrical Research Products was capital investment; didn't have to look at the check because I knew the amount; I knew the amount of the Juneau Bakery is defendant's; I know that George Getchell was hauling stuff from his home; I knew [512] at this time it was defendant's, it wasn't the theatre because Getchell couldn't do anything for the theatre.

The total footing below expense distribution for March, 1929, shown on defendant's exhibit H-5 is \$5,289.61, I don't think that is the same amount as the total of the checks shown there as being drawn in March, 1929; that also is different from the total of the columns shown as covering expense distribution for March, 1929, and is different from the amount I reported in defendant's exhibit K-1 where I used \$2,353.69 instead of \$5,289.61; I personally checked out all the items constituting that difference for March, 1929, the same way I did the other, by actual knowledge of what they were for based upon my personal knowledge.

Defendant also had rents coming in during this time most of which he deposited in the Alaska Film Exchange, but he did deposit rents in the Behrends Bank account for the Coliseum Theatre but there is nothing in those books, defendant's exhibits H-1 to H-7, inclusive, to indicate that; when we made the final deposit of rent we had the rent record; defendant got in no rents from the Ketchikan Coliseum Theatre; there was a small store located in the

(Testimony of Charles M. Tuckett.)

Coliseum Ketchikan Building, but defendant allowed his men to use that as petty cash by which I mean to buy whatever small items they wanted around the theatre, but there was no record kept of it; he didn't demand an accounting of it;

I made out defendant's income tax returns and he returned \$600.00 rent from Ketchikan; there might be some of it included in receipts of the Ketchikan Coliseum Theatre but I don't know how much.

The amount of checks paid for April, 1929, for the Juneau Theatre was \$6,786.96; I don't know the amount of checks drawn or whether the amount of checks drawn was \$6,323.41; I haven't added the various items of expense distribution for that month to see whether it actually amounts to \$6,413.06; I reported the expense on defendant's exhibit K-1 for that month as \$2,125.52; all of defendant's Juneau theatre receipts were put into that account; out [513] of which he paid all expenses of every kind, personal and otherwise, and rents and money he borrowed was put into that account.

Assuming that the amount of the various checks in April, 1929, in defendant's exhibit K-1, is \$917.40, I explain that I reported expenses of \$2,125.52 for that month in defendant's exhibit K-1, because that is the actual cost that I got from the checks here as I segregated the checks that is all the checks amounted to; I didn't check the figures up to the amount of \$2,125.52 because \$948.50 was for film

(Testimony of Charles M. Tuckett.)

that came out of the Film Exchange book; the reason I didn't check them all was it looks as though I did checkmark them here, I checked some; I am not infallible, I might have missed some, I don't claim I checked every one of them; we worked on it continuously and I am not infallible but so far as I looked it over, the different check books are all marked.

In each of these books, defendant's exhibits H-1 to H-7, both inclusive, the various expense distributions for the several months, within the particular portions of those books that have been described as ruled off, in the sense of little columns or like ledger pages, are not what I used when I prepared defendant's income tax return; the only amounts I used were individual check entries; I disregarded this distribution completely; that is the receipts for the month of April; the distribution was made for defendant's own arrangements, I disregarded it completely; I don't know whether it is correct or incorrect; I didn't even consider it.

While on defendant's exhibit "K", I reported the total expenses for the year 1929 for the Juneau Theatre is \$34,183.92, it is true that when I made defendant's income tax return for that year I reported the expenses for the Juneau Coliseum Theatre as \$52,545.72, which was afterwards corrected to show the expenses of that theatre for that year to be \$43,672.54—I think that is the figure, I don't recall exactly. [514]

(Testimony of Charles M. Tuckett.)

I reported in defendant's exhibit K-2 expenses of the Coliseum Theatre, Juneau for 1930 as being \$35,425.90; I also made defendant's income tax return for 1930; it might be that on defendant's income tax return I reported expenses of the Juneau Coliseum Theatre for that year as \$55,625.25; the figures check with the income tax.

I also made out defendant's income tax return for 1931, I can't remember what amount I reported as expenses for the Juneau Coliseum Theatre for that year, I would have to look at the old tax returns.

I was in Ketchikan during the installation of plaintiff's original talkie equipment in 1929; I can't say how long I stayed there, a year more or less, after looking at the check book I would say that I went there the last part of May or some time in May, 1929, and returned to Juneau in September, 1929; I was again in Ketchikan in May, 1930, and remained there some eighteen or nineteen months, but I made trips to Juneau quite regularly; I can't recall how many trips I made to Juneau but it wasn't once a month, could have been once in three months, might have been once in six months, but am unable to state which.

The expense distribution for the Ketchikan Theatre for April, 1930, shown in exhibit H-6 is \$6,293.43; I don't know how much the checks actually drawn amounted to that month: I haven't added up the amount that is given there as having been

(Testimony of Charles M. Tuckett.)

disbursed under that segregation or distribution of expense; I repeat that we disregarded that, didn't pay any attention to it or into consideration when making these statements; that is defendant's own personal distribution of how he could tell what it is; he wanted it and he had it; it showed expenses of operating of the Coliseum theatre and how the checks were segregated so he could tell offhand any way he wanted, how much he spent for wages, film exchange, repairs, how much they were at the time being, that covers nearly everything in the book, all his miscellaneous expenses of operating [515] the theatres are included in that segregation or distribution of expenses, but there is omissions—one \$688.01 omitted, classified as improvement, but omitted from this distribution of defendant; I said I didn't see the figure here, I'll check it; it must be excluded.

For April, 1930, I reported the expenses of Ketchikan Coliseum Theatre in defendant's exhibit I-1 as \$1,014.48; the expense distribution for April, 1930 in defendant's exhibit H-6 is in my own handwriting; these expense distributions in defendant's exhibit H-1 to H-7 were for defendant's own personal use; it wasn't considered in making any dealings, either with making up income tax or this statement: I made some of them, Gross made some of them.

Thereupon the following proceedings took place:

“Q. Look at Exhibit ‘I’, will you please?

A. Yes.

(Testimony of Charles M. Tuckett.)

Q. You reported for the calendar year 1929, Coliseum Theatre at Ketchikan, total expenses of \$38,917.53?

A. That is right.

Q. In Mr. Gross' income tax return you made out for that year you reported expenses for the Ketchikan Coliseum Theatre of \$52,-120.37, is that correct?

A. Not for Ketchikan, I don't think.

Q. Can you refresh your memory from the income tax return?

A. I made it—seems awful high for that.

Q. I will ask you this afternoon to bring those up.

A. O. K.

Q. Looking at defendant's exhibit "I-1" again, Mr. Tuckett, didn't you return the expenses for the Ketchikan theatre there as \$23,880.53?

A. Yes.

Q. And in making out the income tax return for Mr. Gross for the calendar year 1930 didn't you return the expenses of The Coliseum Ketchikan theatre there for that year as \$52,-285.20?

A. I don't think so; I will have to refresh my memory on that; it seems high.

Q. Will you please bring up all those income tax returns so you can refresh your memory on that, after lunch?

A. Yes sir." [516]

(Testimony of Charles M. Tuckett.)

Whereupon Witness Tuckett further testified: I think defendant's attorneys have this bulletin book that I spoke of as having obtained from ERPI or some of its people relative as to how to operate or handle its talkie equipment; I have one just like it in Portland; I bought Richardson's book on that subject; defendant has no books about the operation of sound reproducing equipment that I know of; I have no idea of the total number of checks drawn and recorded in defendant's exhibits H-2 and H-5; in preparing defendant's exhibits Series "K" I used in all about fifteen of those checks; I don't know how many, about fifteen or ten a month; in April I used twelve out of fifty-four checks; in September, 1929, I used fifteen out of sixty-four checks; computing the cost and excluded the remaining forty-nine; these defendant's exhibits Series I and K were based upon items that I checked out from these books as representing costs; defendant never kept a ledger; out of the Ketchikan check books, defendant's exhibits H-6 and H-7, other than payments relative to the operations of the Ketchikan Theatre, payments were also made to plaintiff on the contracts, some of the film checks were paid there, either to the people from whom he bought films or to the Alaska Film Exchange; the Behrend Bank was paid some money, loans to the Miners & Merchants Bank; \$500.00 was drawn out that was used to build at Sitka; an item of \$243.00 for a Frigidaire went into the apartment house at Juneau or Petersburg; the City of Sitka taxes on the Sitka theatre were

(Testimony of Charles M. Tuckett.)

paid out of the Ketchikan account; \$71.11 was paid to Mrs. McLean on account of property; I know of nothing else; neither of defendant's exhibits Series I or K set forth either separately or as a total the various amounts that are set forth in defendant's exhibits H-1 to H-7, both inclusive, as expense distribution tabulations; we picked [517] out the exact expenditures from these books, defendant's exhibits H-1 to H-7, both inclusive, and tabulated them, picked them item by item, but didn't set forth the totals of those tabulations as they appear in those books, defendant's exhibits H-1 to H-7, both inclusive.

Whereupon the following proceedings occurred:

“Q. I now ask you to please refresh your memory as to what the total expenses were reported in Mr. Gross' income tax for the calendar year of 1931 in respect to the Juneau Coliseum Theatre? [518]

A. I will have to get them.

Q. That is for the calendar year 1931 Mr. Tuckett, the Juneau Coliseum Theatre.

Mr. FAULKNER: If the court please, I want to interpose an objection to that question as not proper cross examination and not a proper question. The question would be not the income tax as reported by him but the income tax as paid or accepted or finally settled between the payer and the Collector of Internal Revenue. He asked what income tax was reported.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: No, I asked what expenses he reported in that income tax return for 1931 for Juneau theatre.

Mr. FAULKNER: It is the same thing as shown by the income tax report.

The WITNESS: I can't answer that without an explanation of this income tax.

Q. Isn't the amount stated there?

A. Yes, that is true, but there must be an explanation of the account the way the tax is figured.

Q. I am not asking for an explanation. I am asking for the amount you reported for expenses for the Juneau Coliseum theatre for 1931.

A. That is why I want to explain about the matter.

Q. I ask that the witness be directed to answer the question.

The COURT: The witness is entitled to answer in his own way.

Mr. ROBERTSON: But the question is how much was the amount he reported. I am just interested in the amount reported, at this time.

The COURT: I think the objection is well taken. It will be sustained under the circumstances.

Mr. ROBERTSON: If the court please, we take an exception to that.

The COURT: Allowed.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: We think it would test the credibility of the witness.

Mr. FAULKNER: We have no objection to putting in the figures, but I don't think that is the way to get at it. I don't think it is a fair question.

Q. Now, Mr. Tuckett, I ask you what amount you reported as expenses of the Ketchikan Coliseum theatre for the calendar year 1931? [519]

Mr. FAULKNER: I make the same objection to that question, incompetent, irrelevant and immaterial and not cross examination?

The COURT: Sustained.

Mr. ROBERTSON: Exception, Your Honor.

Q. I now ask you, Mr. Tuckett, what expenses you reported in your income tax return for the calendar year 1932 as the operation of the Juneau Coliseum theatre?

Mr. HELLENTHAL: We have no objection to counsel asking about these income tax reports, provided the witness be permitted to do what I tried to get him to do. I offered these in evidence. Counsel objected, and the Court sustained the objection, but counsel having objected and they being excluded, I now insist they be placed in evidence and the witness be permitted to explain the whole thing,—all put before the jury and the witness given a chance to explain them.

(Testimony of Charles M. Tuckett.)

Mr. ROBERTSON: If the Court please, I objected, as I stated at the time in the formal objection, on the theory that the first and third counter-claims are not the true measure of damages.

The COURT: The Court again rules the witness is entitled to answer in his own way.

Mr. ROBERTSON: Take an exception, Your Honor.

Q. I now ask you to state what amount you reported in Mr. Gross' income tax return for the calendar year of 1932 as the expenses of the Ketchikan Coliseum theatre.

Mr. HELLENTHAL: We are willing that question should go under the ruling of the court that he can explain it and answer in his own way.

The COURT: Provided, of course, it is responsive to the question.

Mr. ROBERTSON: I respectfully urge, Your Honor, that the answer to the question is the amount he reported, that his explanation may be given on redirect examination.

The COURT: That is the ruling of the court.

Mr. ROBERTSON: Take an exception."

Thereupon Witness Tuckett further testified: I am unable to state the respective amounts that I reported as respective expenses of the Juneau Coliseum Theatre and the Ketchikan Coliseum Theatre

(Testimony of Charles M. Tuckett.)

for the years 1931 and 1932, respectively, without refreshing my memory from those reports of which I have in my hand correct copies.

Item in defendant's exhibit H-2, under May 1, 1929, Thomas Hardware \$79.75 was for material for the Gross Apartments; I don't [520] remember the last time I saw that bill; item on May 1, 1929, Thomas Hardware, \$120.05 was for the same thing; I know that because we couldn't put that much material into the theatre; we had no place for it; item of May 1, 1929, National Theatre Supply Company, \$165.33, is for repairs to machines in the Coliseum Theatre, as indicated by a cross mark in front and a check in the rear; we put down \$6.25 of the amount to the Coliseum Theatre, the balance was for other parts for other theatres; I didn't have the bill of it when I was making that statement; the way I knew after a period of almost six years that only \$6.25 of that was to be charged to the Coliseum Theatre was in going over our records of theatre expenses, we found that was the amount; we don't have any more records of expenses; we had the old bill and cancelled check; I must have looked at the bill to get it; I was never asked to bring any of those bills in evidence; a bill is not a record if you have a record of the payment of it: the \$1,500.00 of August 1, 1929, on the Behrend Bank was for the big sign outside the theatre, which was excluded because it was figured in capital investment, but was included in my statement of depreciation; I can't say whether I listed

(Testimony of Charles M. Tuckett.)

in on that statement when I figured up that depreciation; it is in the general tabulation of furnishings and fixtures; I considered that a capital expenditure in defendant's income tax return; item of June 1, 1929, Jack's Transfer, \$58.50, was for hauling stuff for defendant to one of his places, I really don't know whether to the Gross Apartments or up to his house, but I know it wasn't to the theatre; I didn't have a bill when I eliminated that the other day; I personally remember it because of my agreement with him; item of May 1, 1929, Steve Stanworth \$1.75 was for a tap on the wash bowl in the men's room in the theatre; I think it was included; I am not infallible; you can't hold me to each individual one; I see the item of \$507.62, August 7, 1929, City of Juneau taxes—it has a check mark opposite it; the item [521] of October 7, 1929, City of Juneau Taxes, \$683.10, has a cross mark in front of it and was included because we figured the tax on a yearly basis and put it in, paying taxes twice a year; that included everything; it was part payment on defendant's property in Juneau; I believe part of it was allocated to expenses of the Coliseum Theatre; we allotted one-twelfth of that, which was \$63.00 a month; that is why the item of \$683.10 has the cross mark in front of it; item December 15, 1929, Charles Tuckett, \$112.50, was eliminated because we only tabulated half of my salary; I was doing other work for Gross; my total salary was \$225.00; I got \$250.00 a month just after that but I don't know for how long.

(Testimony of Charles M. Tuckett.)

I eliminated the item February 1, 1930, Ketchikan \$70.54 from the tabulation, defendant's exhibit Series K, which was used for paying Mr. Gross' small bills; I have no idea of what they were for; item of \$105.00 J. B. Burford July 1, 1930, was eliminated from exhibit Series K; I really don't know what that item was for; the items of March 1, 1930, City of Juneau taxes \$683.10 and October 1, 1930, Juneau taxes \$728.10 were both excluded because we made an allowance of \$63.00 for each of twelve months; the item of April 16, 1930, Charles Tuckett, was excluded as one-half my pay charged against Gross' other theatre; I don't remember when my salary of \$250.00 a month commenced; item of October 15, 1929, John Davako \$70.00 was eliminated from Exhibit Series "K" because he was a porter in other places for defendant, so only half of his salary was charged to the Coliseum Theatre; two items, November 16, 1929, John Davako, \$20.00 and \$50.00 were both eliminated because that was one-half of his salary; he was janitor; he was never paid \$140.00 a month for work in the theatre; I don't remember if he was ever paid more than \$140.00 a month; item of November 1, 1929, Allen Shattuck, Inc. of \$102.00 was not checked up when eliminated from exhibit K; I didn't have to because I knew that insurance wasn't for the theatre because we carried only very little with [522] him for the theatre, which is the basis of my reason for excluding it; in defendant's exhibit H-6 the item of

(Testimony of Charles M. Tuckett.)

August 1, 1929, Gould and Gould, insurance, \$400.00, that was eliminated; that was for insurance; that was for a sort of general insurance for the circuit which was later cancelled; it wasn't fully completed; part of the money was paid out in the first place; it wasn't expense for the Ketchikan Coliseum Theatre, not that I know of; I don't remember all the details of it; we did have a record of those items of insurance for the theatre building but I don't know where they are, I haven't seen them since I came back; I don't know where he kept them: I couldn't say whether he kept them in a journal or ledger; the item of August 1, 1929, for the Behrend Bank \$1,599.02, that was eliminated; it was for film used in Juneau, Ketchikan, and on the circuit; under Alaska Film Exchange or under film rentals I took all the film rentals allotted in the proper proportions under film rentals and I included the item of \$1,559.02 in order to reach the total amount of what they cost; it was included when I went through the Alaska Film Exchange book; the item of October 2, 1929, Fox Film Company, \$1,785.00, of which \$892.50 was allocated to the cost of the Ketchikan Theatre, and the balance to Juneau, because the first Fox film and the first few of Warner Brothers were bought for the two towns and not put on the circuit.

I was in Ketchikan in July, 1929, I wasn't there in May, 1930; I wasn't in Ketchikan during April and March, 1930; the item of April 3, 1930, Marine

(Testimony of Charles M. Tuckett.)

Paint Company for \$347.72, was excluded from the cost because it was paint for one of Gross' circuit houses at Wrangell, I think either Wrangell or Haines; I know it because approximately at the time he had to worry about getting all this dough in here; I was in Ketchikan at the time but drew the check from Juneau; item of April 10, 1930, Coliseum Theatre \$10.42 was also for Wrangell, plumbing and heating; the item of March 28, 1930, Haywood Wakefield \$574.00 was for seats for Wrangell; I know that by recollection at this time; I didn't look up the bills or anything in making out this statement; as late as November, 1930, [523] Steve Sarakoff's salary as janitor at the Ketchikan Theatre was only \$130.00 a month; I don't know when it was that defendant paid him \$175.00 or \$185.00 a month.

I don't remember where I got the information as to the actual cost of the Ketchikan Theatre; I have the work sheets, Clauson and I made up work sheets, he made some of them and I made others; I kept those work sheets, they are in my papers in Portland. the work sheets of defendant's theatres in Alaska belong to me, they were mine and I took them with me to Portland, but I didn't bring them back here for this trial. I wasn't told to; I knew that I was coming here as a witness for defendant in these suits; I have an impression, I haven't exact figures, the actual cost of the Ketchikan Theatre was around \$90,000.00, including land, building, and

(Testimony of Charles M. Tuckett.)

furnishings up to \$1929; the only improvements defendant put in that theater after 1929 was the Western Electric Sound Equipment and the organ, which latter cost \$11,000.00 but is included in the \$90,000.00; the only insurance carried on that building and equipment of which I ever knew was \$1,000.00; I don't remember what that property was assessed for for taxation purposes by the Town of Ketchikan; in defendant's exhibit Series 1 we pro-rated the Ketchikan taxes at the rate of one-twelfth each month.

I don't know the actual cost of the Juneau Coliseum Theatre or what the land cost; the only thing I know is the valuation arrived at as near as we could by Clauson, that is the only figure I know of, we had no figures to compile on that, it is just an estimate; I think defendant redecorated the Juneau Coliseum Theatre after plaintiff's talkie equipment was installed there in May 1929, but I don't know how much it cost, very small, around \$1,000.00 I imagine; I really don't know whether that is included in defendant's exhibit Series K as an improvement or as a repair, I would have to look it up, I have forgotten that matter; I am unable to say now. [524]

On defendant's exhibits Series I and K by net profits, I mean the difference after deducting the expenses I show on these exhibits, from the receipts I show on these exhibits, and I mean by net losses the amount that the expenses, as shown on these

(Testimony of Charles M. Tuckett.)

statements, exceeds the receipts as shown on these statements; the summarized statements on these exhibits are a compilation from the figures shown on these exhibits made in cooperation with Witness Stabler; he did the tabulating and I called the numbers on these sheets: I can't swear that the addition is correct.

I think the cuts in salaries of the various employees in the Ketchikan and Juneau Theatres were made some months after plaintiff's equipment was removed, but I don't know whether one, two, three, four, or six months later; defendant tried to decrease expenses at the time salaries were cut: the expenses fluctuated proportionately to receipts: our biggest cost was film rental and it takes some time to get reductions in film rental; I think the first big reductions in film rentals obtained by defendant in those two theatres, after the talkie equipment was installed in them, was in the fall of 1931; films have no stable value, it is a matter of what you can bid for them: they were raised again in the spring of 1931, raised in the summer, and reduced in the fall; we started for reductions on film the first few months after plaintiff's equipment was installed in those two theatres.

Defendant acted as general manager of his Juneau and Coliseum Theatres; the only allowance or payment made to him for his services or charged against the operation of either of those theatres as salary for him was just his little bills he paid here in

(Testimony of Charles M. Tuckett.)

Juneau for his house; he would draw checks once in a while for cash and then if he travelled any it was usually paid by the Alaska Film Exchange or whichever theatre he happened to have checks on; it might be paid indiscriminately out of either the Juneau or Ketchikan Theatre: the only allowance made to defendant on account [525] of his services were his living expenses; that is the only money he received; they were not credited or deposited as part of the payment upon his services any way, the only credit he took was, when he made up his income tax report, all his personal expenses were charged to him and that was the only record made of what he received: I did that every year I made up his income tax return; in preparing these statements of costs, defendant's exhibits Series I and K, I made no charge at all and gave no such credit on the cost, leaving them out entirely.

I think there were one or two months that the Juneau Coliseum Theatre expenses were greater than the receipts prior to the time that plaintiff's talking equipment was removed from it, but I can't remember when that was; I think the April, 1931, receipts of the Juneau Coliseum Theatre were a little higher than those of February, 1931, April 20, 1931, being the date on which plaintiff's talking equipment was replevined from the Juneau Coliseum Theatre; defendant's exhibit K-3 shows receipts of the Juneau Coliseum Theatre for April, 1931, were \$3,042.83, and loss \$243.03; the receipts

(Testimony of Charles M. Tuckett.)

for that theatre for February, 1931 were \$3,078.68, expenses \$4,498.26 and loss \$1,419.58, the loss for February, 1931, being greater than for April, 1931; plaintiff's talkie equipment was operated in the Juneau Coliseum Theatre throughout February, 1931.

I think receipts of the Ketchikan Theatre had taken some drops before plaintiff's equipment was removed from it, they took a drop with the season, the season had a little effect on it; I don't think anything else had any effect on it, just the season of the year which is controlled by the fishing season; the best season of the year for the moving picture business was the summer months and early fall by which I mean June, July, August, September and October; I am not saying for any particular year as I don't remember but it has always been my idea that the summer months in Ketchikan were the best months, summer and early fall; so far as [526] Juneau is concerned the show business is very stable, very uniform, not much fluctuation, the fluctuations being caused mostly by the pictures, the weather had a little bit to do with it for a few days, but that was small; I don't remember whether the receipts of the Ketchikan Coliseum Theatre took a decided drop during 1929; I would have to look it up; defendant's exhibit I shows that for December, 1929, the Ketchikan Coliseum Theatre receipts were \$4,314.20 and expenses \$2,497.11; the highest we ever had in that theatre was August, 1929, receipts

(Testimony of Charles M. Tuckett.)

\$7,519.70, the talkie equipment being there throughout that month and in December, 1929, the receipts of that theatre dropped to \$4,314.20; we had no comparatively high month in the Ketchikan Coliseum Theatre then until late summer, September, 1930, when the receipts were \$5,625.75 which was the biggest monthly receipts for the Ketchikan Theatre for 1930. The receipts of that theatre after September, 1930, took no more of a drop in proportion than a year before, the receipts for the Ketchikan Theatre for November, 1930, being \$3,741.25 and for December, 1930, \$2,813.50, a drop as compared to September, 1930, in round numbers of \$2,800.00; the receipts of the Ketchikan Coliseum Theatre for April, 1931, were \$2,987.15, and for February, 1931, exhibit I-2 were \$3,059.05 or \$174.00 higher than for that same theatre for December, 1930; I don't know what caused the big drop in receipts for the Ketchikan Theatre for December, 1930; the Juneau Coliseum Theatre never had a month with as high receipts as the highest month in Ketchikan; the Juneau Theatre's receipts for January, 1930, were \$4,633.35, February, 1930, \$3,757.91, a decrease of a little over \$800.00, in March, 1930, \$3,674.55, or a drop of a little less than \$1,000.00 as compared to January, 1930, in that theatre; receipts in that theatre were down again during the months of May, June, July and August, 1930, and they didn't go up again to any large extent until December, 1930; in January, 1931, they were \$3,347.41 and for De-

(Testimony of Charles M. Tuckett.)

ember, 1930, \$5,517.55, making a decrease in round num- [527] bers of about \$2,100.00; it is true that both receipts and expenses of the Juneau Coliseum Theatre were very high for some of the months during which plaintiff's equipment was in it, and it is also true that during some of the months the receipts were comparatively low and the expenses remained high, and it is also true that sometimes the receipts were quite high and the expenses were low during that period; in other words, the receipts and expenses didn't necessarily fluctuate proportionately with each other; I would say that the expenses of the Ketchikan Theatre didn't fluctuate very much, well they dropped down to \$1,600.00 and were up to \$2,800.00, which fluctuation didn't necessarily depend on the amount of receipts taken in by the theatre for that particular month.

The Capitol Theatre started up in Juneau on January 15, 1931; the repairs that I made to plaintiff's talking equipment in the Juneau Theatre were I supervised the making of repairs to the pilot light, which I wired Seattle for in January; it was under my supervision; Ned Lemieux actually made the repairs; the other repairs I made was the freeze up of the drive and a little bit later during Foulon's time, I don't remember the exact date, the operator called from the booth and said the machine wouldn't go so we sort of tested out the drive to see about the trouble and found out it was in this drive, I think in the 709-A drive; I and

(Testimony of Charles M. Tuckett.)

my helper and helper operator Zolman Gross actually made whatever correction or repair was necessary when this freeze-up occurred; there was only one more repair made, the exact date I don't quite remember, which was in the photo electric cell line—Mr. Lemieux made that repair, the engineer had been around and shortened up the wire from the photo electric cell to the pre-amplifier and got it too tight or soldered the connection so it was too tight, and caused a crackling noise whenever the machine was running and get warm and start a crackling noise, which occurred I think, a little after January, 1930; I think it was after my pilot light repair; I made just one repair in the Ketchikan Theatre, just [528] after the opening, a broken wire going up to one of the tubes, Mr. Taylor being either on the boat or in Juneau, I don't know where he was, but he was in Alaska at that time; I helped Taylor install the talkie equipment when it was installed in Juneau, the particular aid I gave him was: I unpacked it in Juneau here and Louis Lemieux and myself unpacked all of the different parts, such as the pre-amplifier, fly-wheel, movie-tone, and cabinet there; we did all the unpacking of it, set up the foundation for the base and helped him line up the motor and even to put in the main fly-wheel and also connect the different drive shafts; I soldered all the connections at the back of the main panel; I was generally helping Taylor, giving him the several parts, helping him put them to-

(Testimony of Charles M. Tuckett.)

gether, running the machine when he was testing it, helping him set the horns; he supervised it and told us what to do and we did the work; he told us what to do; I couldn't say whether Lemieux did anything else in connection with the installation of the equipment in the Juneau Theatre; I was present at the time but we were not instructed in the working of the different parts of the equipment; when the talkie equipment was being installed in Ketchikan I went from Juneau to Ketchikan with Mr. Taylor and the particular work I did there in respect to helping him was the same exactly as in Juneau, only I did it by myself, helping him unpack, soldering the connections at the back of the rack on the photograph, plaintiff's exhibit 15; that is all the work I did there, just helped him along; one time I fixed the hum I found in the Juneau machine; we found it was AC and we knew it was in our own equipment and traced it down to a short circuit; I don't remember having any such trouble in the Ketchikan Theatre and I don't think I ever fixed any down there.

In fixing the hum in the Juneau Theatre I used for framing my pilot light on the front, which had been shorted against the machine; every week I always checked with a hydrometer the A battery which was a wet cell, to see that the connections were tight [529] and that they were clean, and the operators kept them charged up and the chart kept, and I looked into them to see that there was plenty

(Testimony of Charles M. Tuckett.)

of water in them; I don't remember finding any loose connections in those batteries during that time; I would try the wire, if it was loose I would tighten it; that was the only means I used of checking loose connections; it was just an inspection of what my operators were doing, of whom we had several, at one time Billy Burke, Duncan Sinclair, Ralph Bontrager, Homer McLean, and another time Zolmain Gross; I didn't defer to their opinions as to their knowledge being better than mine with respect to the equipment; I just went over it and saw that they did their work, is all.

Sometimes I was in Juneau when a service engineer called and sometimes I was in Ketchikan; at the start I spent all the time I could with him when he called because I was interested in the machines; all the time he was in the theatre; any time that Taylor was there I spent with him and I was with Witness Knowlton the greatest part of the time he was there; I don't think I spent much time with Albright, I didn't know him very well, or with Tobey; I never met Little, I only met Hurlburt once; I spent two or three hours, I presume, with Foulon when he made his trips here for inspection and service; I didn't spend, with him on each occasion, the entire time that he devoted to going over the entire equipment, but I did on one or two occasions; I spent pretty nearly all the time with Knowlton when he was here; I spent some time with Witness Lawrence, but couldn't say how much, but

(Testimony of Charles M. Tuckett.)

not every time he was here; I couldn't state the amount of time I spent with him on any particular occasion as he was around the theatre quite a bit; we were friendly and he spent most of his time around the theatre; he tested the line voltage to the horns; I don't recall which equipment; we made the test once in a while, we had a meter tester there, measured the line voltage, as we had three amperes at the horns, with a regular meter plaintiff supplied; I sent out the reproducer in Juneau one time for repairs; that is the only thing in parts [530] for repairs that I remember sending out; I had a spare reproducer; it was sent to Seattle for repair and overhauling to plaintiff; I don't remember why the service engineer recommended a change in the apertures in this equipment; they recommended a new lense system as they told us it would give us a higher cycle but I don't recall their having recommended a change in the apertures; in those bills is one for a 555-W receiver, the receiver on the horn: I couldn't say for sure what it is; it was sent in from Ketchikan for repairs; I don't know why it was necessary to do so but believe Louis Lemieux sent it to plaintiff in Seattle; I don't have any personal knowledge as to what was the matter with it or as to why it was sent for repairs; I would be able to tell whether or not an aperture or receiver was defective if it caused any trouble; I never had any trouble with a receiver furnished by plaintiff.

(Testimony of Charles M. Tuckett.)

When the fuse blew in the batteries in the charging panel, that put one of the machine amplifiers out of business and there was no power in the disc—the film side or the disc, I don't remember which, but the opposite machine was running, the machines being set up in pairs and the paired machine was still running; only one machine was crippled to the extent that you couldn't use the disc on the left side; you couldn't get any sound as it would blow out the fuse; this particular trouble that affected only one of the amplifiers, affected disc reproduction because it would blow the fuse out from the battery room; whenever we would throw that switch on the disc side, it would blow out the fuse.

Mr. Gross went East in September, 1929, and got back the fore part of February, 1930, and was gone all that period, returning on February 10, 1930, at which time I called his attention to this trouble that I spoke about a minute ago; during his absence I was more or less general manager or supervisor of the Ketchikan Theatre from Juneau and I had charge of his entire business; the Ketchikan manager, during Gross' absence, being really [531] subject to my orders.

The other trouble I called to defendant's attention when he returned early in February, 1930, was about the tubes, which seemed to be a constant trouble; I had had no specific trouble of that kind shortly before his return, it was just a continuous

(Testimony of Charles M. Tuckett.)

trouble with the tubes; the tubes used in the little 42 amplifiers; I had tested with these meters on panel 7 on exhibit 15 to see if these tubes were defective; also tested to see that they fitted in the sockets. If the tube was low we took it out and put in another; I don't remember what the limit of rejection was on the use of the tube; these tubes were a trouble that I told Gross about separate from the fuse blowing and loose connections but I don't really remember any other specific trouble, just a general complaint about fuse blowing out and having to wire for them; my tubes were being low; the cooperation I received from plaintiff about it was that they wired me; I wired them but that is all the good it did; they told me how to locate the trouble and also told me the engineer was on the way; we found the trouble before that; at that time I just summed it up in my own mind, I figured they wouldn't cooperate with me; I had all the trouble myself and so I just made the complaint to defendant; I wrote and signed this letter to plaintiff dated January 28, 1930.

Thereupon defendant's letter, signed by Tuckett, addressed to plaintiff, through Briggs, dated January 28, 1930, was received in evidence, marked

(Testimony of Charles M. Tuckett.)

PLAINTIFF'S EXHIBIT 40,

and reads:

“The Alaska Film Exchange
Juneau, Alaska

Jan. 28, 1930.

J. S. Briggs

Electrical Research Prod. Inc.

458 Skinner Bldg.

Seattle, Wash.

Dear Mr. Briggs;

Your cable and also your letter received. [532]

In answer to same we will state. Before we received your cable I and my operator succeeded in finding the trouble, as it was a case of have to, as you know away up here we have to keep the show going no matter what happens.

We appreciated your cable as it confirmed what we had found was wrong. Since fixing this light we have not had any trouble since.

While I am at it I would like to make a complaint against some of the tubes. #239 tube that we have been receiving are not much good in fact there is only one in about 50 that we get our hours out of. Last night we had to change two tubes that had only been working about ten hours. Anyway when your service man arrives we will take this matter up with him.

I understood from one of the service men that they had new tubes of this kind coming out. Is this so. And if so would we be able to get them.

(Testimony of Charles M. Tuckett.)

Also Mr. Darragh recommended two new lenses for our movietone, When will we be able to get these as I understand they are far superior to the ones we now have.

Thanking you for your co-operation in all our trouble we remain,

Very truly yours,

(Signed) CHAS. TUCKETT, Mgr."

Whereupon Witness Tuckett further testified: That letter dated January 28, 1930, referred to the trouble mentioned in defendant's telegram of January 17, 1930, heretofore put in evidence, defendant's exhibit N; the only trouble I think after that was from the photo electric cell but I don't recall just when that was; to my knowledge we didn't get any cooperation in fixing that trouble; the operator fixed it; he asked for a certain part and I went and got it for him; I wrote and signed this letter dated February 5, 1930.

Whereupon defendant's letter signed by Tuckett dated February 5, 1930, addressed to plaintiff through Briggs, was received in evidence, marked

(Testimony of Charles M. Tuckett.)

PLAINTIFF'S EXHIBIT 41,

and reads:

The Alaska Film Exchange

Juneau, Alaska.

Feb. 5, 1930

J. S. BRIGGS

Electrical Research Products Inc.

Seattle, Wash.

Dear Mr. Briggs: [533]

Your wire of Feb. 5, 1930 received and in regards to the trouble that we are having is as follows:

Our first trouble was in the pilot light which you were so kind as to check for us. But now our trouble is in the little green wire that runs from the Photo Electric Cell to the grid. We have fixed this for the time being. But when the engineer gets here he will have to put in a new wire as it is much to short.

One of your engineers cut this wire just so it was tight and gave no play in it. I would suggest that they have a little play in this wire as we have some vibration in our booth. This vibration is the cause I think of this wire becoming loose.

The tubes we mentioned do not hold up at all. One or two of the first tubes that came with the equipment is still working. But the last ones that have been shipped will not hold up more than 20 or 30 hours.

I would like very much if you will instruct your engineer to go over 700A on our red machine and fix

(Testimony of Charles M. Tuckett.)

up some of the connections as they are poorly made and this machine is the one that is giving us all our trouble.

The last two service men you have sent up here look over the machines in a hurry in fact hardly any of them have put in more than 40 minutes on our equipment and this you will admit is a short time.

We wish to thank you for the very fine co-operation you have given us in our trouble and we hope that now everything will work in A 1 shape.

Very truly yours,

(Signed) Chas. Tuckett''

Whereupon Witness Tuckett further testified: We eventually fixed Number 700-A machine, which is referred to in that letter; I don't remember what we did to fix it; Ned Lemieux fixed it; he worked on it quite a bit, but I don't remember just what it was he fixed: the main difficulty was with the photo electric cell wire: I know eventually I had to go to the Light Company and get a piece of wire so he could fix it: after he fixed it we had no more trouble.

I received all those reports for which I signed which are included in plaintiff's exhibits Nos. 7 to 14, both inclusive, Series 21, Series 22, and Series 23: my operators were qualified to make a general inspection every night and make minor adjustments [534] the ordinary conditions in the equipment from day to day; I would say they proved themselves qualified if anything unusual of any kind came to do it.

(Testimony of Charles M. Tuckett.)

At no time after the installation of the plaintiff's talkie equipment in either defendant's Ketchikan or Juneau Theatre and before its replevin, did either defendant or I contemplate closing either or both of those houses, because of poor business; business was good; I was in a position in 1930 to know whether or not either of these theatres was losing money and neither of them was losing money in the summer of 1930, and neither was in the red that summer; this telegram dated July 18, 1930, was sent by the Coliseum Theatre, Juneau to plaintiff through Witness Pearsall.

Whereupon defendant's telegram signed Coliseum Theatre dated July 18, 1930, addressed to plaintiff through Pearsall was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 42,

and reads:

"FA94 Collect NL via Seattle

1930 Jul 18 AM 6 16

Juneau Alaska 17

R. H. Pearsall

Electrical Research Prods Inc Los Angeles Calif

Gross out of town Unable to reach him in regards to service Will take up immediately upon his return Will straighten things up Then letter follows in regards to service If you force us we will either have to close both houses until we get adjustment of service charges as both houses are now in the red

Coliseum Theatre"

(Testimony of Charles M. Tuckett.)

Redirect Examination

Thereupon Witness Tuckett further testified: The purpose of sending that telegram was to stall them off; I sent it.

Whereupon the following proceedings were had:

“Q. What then did you mean my saying ‘You would force us’—What were they trying to force you to do?

Mr. ROBERTSON: Object as not the best evidence; the telegram speaks for itself.

The COURT: He may answer.

Mr. ROBERTSON: Exception. [535]

Q. What did you mean by ‘force us’—‘force us’ to do what?

A. I just put it in ‘force us to close the house.’ Couldn’t stand it. We write many letters of that effect to the film exchanges.

Q. What were they trying to force you to do?

A. Add service.

Q. How Much?

A. Nineteen dollars and seventy-five cents a week.

Q. Nineteen dollars?

A. Nineteen dollars and seventy-five cents a week.”

Whereupon Witness Tuckett further testified: That is what I referred to in my telegram; I had

(Testimony of Charles M. Tuckett.)

some trouble in 1930 and wired Seattle and received a telegram that an engineer was coming but before he came I adjusted the trouble myself; Smith's reports are missing from those that were introduced in evidence; also one for Lawrence signed under protest; I didn't see it; Smith is the man who was supposed to come in response to that telegram but he didn't come to my knowledge; I was told he was here though; I waited up for him but he didn't show up; I stated that there were some small items left out of those accounts that I prepared; I could not say exactly without going over the whole statement which they are, but Witness Stabler, who helped me make the accounts up—we took it under advisement and couldn't decide on the matter, whether it really belonged to the theatre or not so we left them out; the limit of the amount of them, I think, would be around \$250.00 which would cover it; I don't know whether the painting contract for redecorating the Coliseum Theatre was charged to expense or not; my recollection of the \$400.00 insurance paid Gould and Gould was Gross had been in Seattle and Gould and Gould sold him a bunch of insurance for his Ketchikan, Petersburg, Wrangell, Sitka, and Haines Theatres; it seems it was more than \$400.00, anyway we didn't pay any more of it and the insurance was cancelled so far as I know; that item was not included; the [536] item of \$656.00 or some such amount for plaintiff's equipment was put in as capital investment, a

(Testimony of Charles M. Tuckett.)

monthly payment; Internal Revenue ruled against putting it in as cost; there were certain expenses in connection with the income tax return in Ketchikan and Juneau that were higher than the amount that I used in these tabulations defendant's exhibits Series I and K, because the 1929 income tax report was refused by the Internal Revenue and they sent Clauson to check it up and then when they rejected it they didn't allow us for something like \$13,000.00 worth of stuff I had in there, expenses, in the amount was also an enormous film rental for the whole circuit which was \$33,000.00 and he only allotted Ketchikan one-third; Attorney Faulkner and I made a memorandum from the income tax returns showing the difference between the expenses in the income tax reports and the figures I have given the Court and Jury; defendant's income tax return for 1929 takes care of all of his business as a whole; all the money he received and all the money he expended from all the different sources. He had money received—Juneau—\$52,578.55; Ketchikan, \$58,222.74, plus some rentals; the expenses at Ketchikan were \$52,120.37 and the expenses at Juneau were \$52,545.71; in expenses \$11,912.27; film, Juneau, paid out; and \$33,981 Ketchikan paid out; these two figures combined total the amount paid for films during the year, which were used in other than Ketchikan and Juneau, which made a total of \$45,894.03. When I tabulated this statement here I only use 1/4th of the cost of film rental, which was

(Testimony of Charles M. Tuckett.)

the allotment we allotted to Ketchikan, so it would be 1/4th, 25% of that film rental to be allotted to Ketchikan, which is approximately eleven thousand dollars; I haven't the exact figures. When they re-checked our income tax I had in as expenses motion picture machines \$6,838.93, payment on organs \$4,500.00, life insurance \$905.26, special assessments and tax \$707.62; bad debts \$705.66; contributions \$312.00 which made a total of \$13,969.37, which the Government refused me. They disallowed it, which is the summary here, which they made, is marked [537] very plain, so that is the reason of the cause of the difference in the two figures; the total difference is \$18,693.75, film rental \$13,969.00, income tax deductions, total \$32,662.75, which just about checks with the figures given here in Court; before I testified I submitted the income tax report and Treasury Department action on it to the other side; they questioned me this morning about the report itself not on the final figures given me; defendant's 1930 income tax report was corrected by the collector and shown to be \$34,084.10; I haven't had time to check those figures with the ones I gave here; to your question, "In making up the figures did you take into consideration the income tax report?" I answer "Just the receipts only." The business in any theatre always fluctuates, depending upon weather conditions, pictures mostly, different grades of pictures, you know; if a picture happened to be the kind people want you get a

(Testimony of Charles M. Tuckett.)

bigger play; in February, 1930, the Juneau expenses were quite high, that was a high month for 1930; we had a little bit more film rental; it wasn't especially high, that is about the average; I answered on Cross Examination that the Capitol Theatre opened in Juneau January 15, 1931; as a matter of fact it had been running about fifteen years before that practically all the time.

Thereupon the following proceedings took place:

“Mr. HELLENTHAL: Your Honor, I was going to put in some schedules with this witness. We have not been able to get them ready and I will not detain this witness on that account; but we can put them in with Mr. Stabler. If Mr. Tuckett is here Monday morning we will put them in. If not we will put them in by Mr. Stabler. I don't want to be understood as discharging the witness now.

Recross Examination.

Thereupon Witness Tuckett further testified: New equipment was put in the Capitol Theatre and it was renovated and started under new management January 15, 1931;

Thereupon the following proceedings were had:

[538]

“Q. Now, Mr. Tuckett, under your corrected tax return for Mr. Gross, corrected income tax return for the calendar year 1929, you reported after it was corrected, expenses of the Juneau theatre as \$43,672.44 didn't you?

(Testimony of Charles M. Tuckett.)

A. No, I said—What I really meant was this expense cannot be tabulated in here in either Juneau or Ketchikan, that the income tax covers all Mr. Gross' property, and that you can't segregate those two from the income tax.

Q. But you reported, when you made the corrected income tax return for Mr. Gross for the calendar year, 1929, the expenses of the Juneau Coliseum theatre were reported at \$43,672.44, is that correct?

A. I haven't that here.

Mr. HELLENTHAL: Object as incompetent, irrelevant and immaterial. What he reported is not the question. It is what this was finally settled at. We offer the report there because the report itself is the best evidence.

Q. Isn't that what you reported? That memo you have there was made by Mr. Faulkner; it is in his handwriting, isn't it?

A. Yes, he and I made it up; but this report is not correct; I can't testify to this.

Q. The question I asked you is if on your corrected return for 1929 you didn't report as expenses of the Coliseum Theatre, Juneau, \$43,672.44.

A. I have no figures like that.

Q. Can't you look at your return and—Say! You are looking at the memo in Mr. Faulkner's handwriting. I asked you to look at the income

(Testimony of Charles M. Tuckett.)

tax return and various reports you got there for 1929.

A. I reported how much?

Q. In the corrected return for 1929, as expenses of the Juneau Coliseum Theatre—\$43,672.44?

A. I didn't have any figures like that.

Q. Do you have a corrected return for that year?

A. I have the return, what they call unallowable deductions; they didn't allow deductions on it. They took it off. It had nothing to do with receipts, but these deductions include both Ketchikan and Juneau.

Q. I am not asking about receipts.

A. I am talking about expenses—\$13,679.37, include both Juneau and Ketchikan. I couldn't give you the total expenses of either one of the theatres from these deductions. [539]

Q. Didn't you, in that corrected return in January, 1929, for Mr. Gross, return expenses of the Ketchikan theatre as \$47,024.27?

A. I don't see it at all here.

The COURT: I suggest you show the witness the document to which you refer and give him an opportunity to explain it. He shows he don't understand it.

Mr. ROBERTSON: I submit he has it there.

The COURT: Show him the document you have there, or go on to something else.

Mr. ROBERTSON: I have no documents.

(Testimony of Charles M. Tuckett.)

The COURT: All right. He told you he didn't know, what you are talking about.

Mr. ROBERTSON: Then at this time I ask to have the returns he now has in his hands marked as an exhibit for identification so we can examine again.

Q. Your answer is, you don't know what I am talking about?

A. No, I can't find the figures.

Q. Have you the income tax return for 1930?

A. They are all there.

Q. Now, Mr. Tuckett, have you got the returns there for Mr. Gross for the calendar year 1930?

A. Yes, right there.

Q. Will you please look at them. How much did you return the expenses of the Juneau Coliseum theatre for that year in that return?

A. I made a return for Juneau theatre and the apartments, total operating expenses \$45,-500.13.

Q. Was the corrected return?

A. Yes sir.

Q. How much of that was for the apartment?

A. That I couldn't segregate, I would have to go figure it out again.

Q. You are unable to figure that?

A. I could by going over the books.

(Testimony of Charles M. Tuckett.)

Q. How much did you return for the Ketchikan Coliseum theatre as expenses for that year?

A. As expenses?

Q. Yes. [540]

A. \$19,051.10, without films.

Q. In your corrected return?

A. Yes sir.

Q. Without films?

A. Yes sir.

Q. What was the cost of films?

A. \$42,724.16.

Q. With films?

A. No, that is the film billed, the film bill itself.

Q. How much of that film bill was applied to Juneau?

A. Fifty per cent.

Q. How much to Ketchikan?

A. Twenty-five.

Q. That would be added to those respective amounts you named a few minutes ago?

A. Yes, \$3,666.70 for film service."

Whereupon copies of defendant's income tax return for 1929 and for 1930 were marked respectively plaintiff's exhibits 43 and 44 for identification.

Re-Redirect Examination

Thereupon Witness Tuckett further testified: I would have to check to see whether or not the figures

(Testimony of Charles M. Tuckett.)

as finally settled for the years 1929 and 1930 as shown by those two reports, plaintiff's exhibits Nos. 43 and 44 for identification are the same as the figures that I gave in my tabulations, defendant's exhibits Series K and I, but the receipts are identical; those reports cover both Juneau and Ketchikan Theatres and the apartments.

Whereupon the following proceedings were had:

“Mr. HELLENTHAL: I think, Your Honor, while we are waiting I might offer defendant's exhibit ‘X’ in evidence. It has been referred to so often, and while it contains some statements not pertaining to the Coliseum, the book also contains entries, so I offer the whole bundle as one exhibit. [541]

Mr. ROBERTSON: The same general objection, incompetent, irrelevant and immaterial; doesn't go to the true measure of damages.

The COURT: Is that all this big bundle of checks?

Mr. HELLENTHAL: Yes, Your Honor. The checks are segregated by months and wrapped up in the bank statements.

The COURT: I thought it was already understood they might be marked and used for any purpose necessary.

Mr. HELLENTHAL: Yes, that was the understanding, but I think they are so connected it might be well to introduce them as an exhibit under the circumstances and let them be

(Testimony of Charles M. Tuckett.)

used either in this court, or any other court.

The COURT: Is that agreeable to counsel for the other side, subject to the general objections?

Mr. ROBERTSON: Yes. I don't see the necessity for putting them all in, if counsel wants to offer them—simply a bundle of papers.

The COURT: Of course there is a lot of stuff there not pertaining to the issues,—not admissible at all.

Mr. ROBERTSON: Of course I don't suppose anybody could tell what is admissible or isn't.

The COURT: What I am getting at now, what I want to know now is whether you are agreeable to letting them be received subject to your general objection?

Mr. ROBERTSON: Yes, I don't see how I can make any further objection.

The COURT: It may be received with that understanding."

Whereupon a large bundle of check vouchers, statements, etc., was marked Defendant's Exhibit "X". None of which checks, vouchers, statements, etc. were individually exhibited or read to the jury at any time during the course of the trial, but which were taken by them into the jury room and the original whereof is hereby incorporated herein, and made a part hereof. [542]

(Testimony of Charles M. Tuckett.)

DEFENDANT'S EXHIBIT U,
bank deposit book with The B. M. Behrends Bank
from April 19, 1928, to October 8, 1932, both inclu-
sive, reads:

“The B. M. Behrends Bank in account with Col-
iseum Theatre, Cr.

Deposits			Deposits		
Apl	19, 1928	\$ 76.40	Jun	11, 1928	\$232.00
Apl	20, 1928	138.00	Jun	13, 1928	125.70
Apl	21, 1928	143.80	Jun	15, 1928	174.45
Apl	23, 1928	332.60	Jun	18, 1928	237.40
Apl	24, 1928	57.40	Jun	20, 1928	65.50
Apl	25, 1928	48.60	Jun	22, 1928	116.55
Apl	26, 1928	50.90	Jun	25, 1928	297.60
Apl	27, 1928	160.20	Jun	26, 1928	45.20
Apl	27, 1928	90.50	Jun	27, 1928	84.90
Apl	30, 1928	248.10	Jun	29, 1928	83.30
May	1, 1928	58.50	Jun	30, 1928	75.70
May	3, 1928	93.60	Jul	2, 1928	210.90
May	4, 1928	125.50	Jul	3, 1928	52.30
May	5, 1928	105.60	Jul	5, 1928	197.65
May	7, 1928	249.60	Jul	6, 1928	89.40
May	8, 1928	50.90	Jul	7, 1928	82.50
May	9, 1928	92.00	Jul	9, 1928	250.70
May	11, 1928	188.80	Jul	11, 1928	186.00
May	12, 1928	125.10	Jul	13, 1928	132.10
May	14, 1928	234.20	Jul	14, 1928	50.70
May	16, 1928	106.80	Jul	16, 1928	208.70
May	18, 1928	99.80	Jul	18, 1928	130.40
May	18, 1928	26.00	July	20, 1928	168.10
May	19, 1928	71.70	Jul	21, 1928	122.30
May	21, 1928	214.90	Jul	23, 1928	244.00
May	28, 1928	92.10	Jul	25, 1928	111.15
May	24, 1928	55.00	Jul	27, 1928	161.95
May	25, 1928	102.10	Jul	30, 1928	296.50
May	26, 1928	103.10	Aug	1, 1928	102.50
May	28, 1928	246.00	Aug	3, 1928	145.80
May	31, 1928	195.30	Aug	4, 1928	86.30
Jun	1, 1928	96.60	Aug	6, 1928	201.20
Jun	2, 1928	71.20	Aug	9, 1928	119.90
Jun	4, 1928	223.30	Aug	11, 1928	140.35
Jun	6, 1928	118.40	Aug	13, 1928	242.80
Jun	8, 1928	92.80	Aug	15, 1928	196.90

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Aug	17, 1928	\$163.70	Oct	26, 1928	\$145.20
Aug	20, 1928	368.00	Oct	26, 1928	114.30
Aug	22, 1928	153.50	Oct	26, 1928	125.00
Aug	24, 1928	244.50	Oct	29, 1928	330.90
Aug	25, 1928	89.20	Oct	31, 1928	141.50
Aug	25, 1928	258.70	Nov	2, 1928	177.65
Aug	29, 1928	138.60	Nov	3, 1928	120.40
Aug	31, 1928	166.70	Nov	5, 1928	349.10
Sep	4, 1928	248.30	Nov	7, 1928	110.95
Sep	4, 1928	132.20	Nov	9, 1928	193.60
Sep	6, 1928	107.95	Nov	10, 1928	156.70
		[543]	Nov	12, 1928	305.50
Sep	7, 1928	117.90	Nov	14, 1928	184.90
Sep	10, 1928	348.70	Nov	15, 1928	125.40
Sep	12, 1928	259.80	Nov	17, 1928	117.00
Sep	14, 1928	127.90	Nov	19, 1928	274.90
Sep	17, 1928	271.70	Nov	21, 1928	155.80
Sep	20, 1928	315.25	Nov	23, 1928	333.60
Sep	21, 1928	122.50	Nov	24, 1928	200.60
Sep	22, 1928	150.50	Nov	26, 1928	283.10
Sep	24, 1928	326.85	Nov	28, 1928	97.90
Sep	26, 1928	174.00	Nov	30, 1928	304.50
Sep	27, 1928	79.70	Dec	1, 1928	91.40
Sep	28, 1928	157.80	Dec	3, 1928	281.90
Sep	29, 1928	165.50	Dec	5, 1928	111.70
Oct	1, 1928	305.50	Dec	7, 1928	112.30
Oct	3, 1928	178.30	Dec	10, 1928	361.40
Oct	5, 1928	177.40	Dec	14, 1928	87.90
Oct	6, 1928	126.20	Dec	17, 1928	150.00
Oct	8, 1928	297.90	Dec	17, 1928	236.20
Oct	10, 1928	125.00	Dec	19, 1928	100.70
Oct	12, 1928	163.50	Dec	21, 1928	138.00
Oct	13, 1928	120.40	Dec	24, 1928	267.25
Oct	15, 1928	308.90	Dec	26, 1928	276.70
Oct	17, 1928	176.40	Dec	27, 1928	92.90
Oct	19, 1928	185.20	Dec	28, 1928	74.10
Oct	20, 1928	121.10	Dec	29, 1928	55.90
Oct	22, 1928	319.30	Dec	31, 1928	246.10
Oct	25, 1928	52.70	Jan	2, 1929	305.50
Oct	25, 1928	129.30	Jan	3, 1929	84.85

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Jan	4, 1929	\$ 38.70	Mar	23, 1929	\$115.30
Jan	5, 1929	45.40	Mar	25, 1929	264.90
Jan	7, 1929	209.90	Mar	28, 1929	148.45
Jan	9, 1929	74.80	Mar	29, 1929	118.95
Jan	11, 1929	129.10	Apr	1, 1929	311.20
Jan	14, 1929	368.90	Apr	4, 1929	194.80
Jan	16, 1929	102.00	Apr	6, 1929	201.10
Jan	18, 1929	179.10	Apr	8, 1929	297.90
Jan	21, 1929	382.30	Apr	12, 1929	319.60
Jan	25, 1929	126.20	Apr	15, 1929	359.90
Jan	25, 1929	157.80	Apr	17, 1929	91.00
Jan	28, 1929	177.00	Apr	19, 1929	175.95
Jan	28, 1929	106.80	Apr	22, 1929	356.61
Jan	31, 1929	124.00	Apr	25, 1929	149.70
Feb	4, 1929	190.60	Apr	27, 1929	189.10
Feb	4, 1929	256.80	Apr	29, 1929	329.40
Feb	7, 1929	132.10	Apr	30, 1929	85.30
		[544]	May	3, 1929	140.95
Feb	9, 1929	162.20	May	6, 1929	334.20
Feb	11, 1929	304.30	May	6, 1929	42.50
Feb	13, 1929	158.75	May	10, 1929	221.60
Feb	15, 1929	155.80	May	13, 1929	356.50
Feb	18, 1929	94.80	May	15, 1929	664.50
Feb	18, 1929	245.20	May	16, 1929	320.50
Feb	21, 1929	156.60	May	16, 1929	37.80
Feb	25, 1929	158.30	May	17, 1929	180.75
Feb	25, 1929	267.85	May	18, 1929	153.75
Feb	28, 1929	134.70	May	20, 1929	380.40
Mar	1, 1929	107.10	May	20, 1929	68.00
Mar	2, 1929	77.80	May	22, 1929	482.85
Mar	4, 1929	304.00	May	23, 1929	167.15
Mar	7, 1929	132.00	May	25, 1929	172.30
Mar	8, 1929	116.70	May	25, 1929	45.00
Mar	11, 1929	312.15	May	27, 1929	318.80
Mar	14, 1929	75.00	May	29, 1929	164.35
Mar	14, 1929	81.20	May	31, 1929	254.50
Mar	18, 1929	351.00	Jun	1, 1929	59.90
Mar	18, 1929	75.00	Jun	3, 1929	283.30
Mar	20, 1929	121.60	Jun	5, 1929	160.00
Mar	22, 1929	188.70	Jun	7, 1929	125.50

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Jun	8, 1929	\$131.30	Aug	2, 1929	\$182.00
Jun	10, 1929	423.20	Aug	5, 1929	374.80
Jun	14, 1929	200.00	Aug	6, 1929	124.05
Jun	14, 1929	169.05	Aug	7, 1929	308.85
Jun	15, 1929	72.10	Aug	8, 1929	155.60
Jun	17, 1929	361.80	Aug	10, 1929	82.50
Jun	18, 1929	69.40	Aug	12, 1929	343.45
Jun	19, 1929	493.70	Aug	13, 1929	56.05
Jun	20, 1929	300.00	Aug	14, 1929	676.90
Jun	21, 1929	36.00	Aug	14, 1929	434.90
Jun	21, 1929	110.10	Aug	16, 1929	218.05
Jun	22, 1929	69.95	Aug	17, 1929	186.50
Jun	24, 1929	300.00	Aug	21, 1929	317.75
Jun	26, 1929	353.10	Aug	22, 1929	160.45
Jun	27, 1929	228.65	Aug	23, 1929	95.30
Jun	28, 1929	75.45	Aug	24, 1929	60.35
Jul	2, 1929	110.05	Aug	26, 1929	373.95
Jul	3, 1929	102.80	Aug	27, 1929	75.20
Jul	5, 1929	845.75	Aug	29, 1929	495.95
Jul	6, 1929	237.35	Sep	3, 1929	101.10
Jul	8, 1929	342.50	Sep	3, 1929	573.30
Jul	10, 1929	372.75	Sep	5, 1929	499.40
		[545]	Sep	9, 1929	647.40
Jul	11, 1929	271.20	Sep	12, 1929	421.95
Jul	12, 1929	73.85	Sep	16, 1929	532.65
Jul	13, 1929	81.90	Sep	20, 1929	359.55
Jul	15, 1929	379.90	Sep	24, 1929	500.50
Jul	18, 1929	215.30	Sep	24, 1929	116.20
Jul	19, 1929	242.50	Sep	26, 1929	478.60
Jul	19, 1929	141.70	Sep	30, 1929	662.70
Jul	20, 1929	112.30	Oct	3, 1929	556.55
Jul	22, 1929	411.20	Oct	7, 1929	660.45
Jul	24, 1929	516.00	Oct	10, 1929	460.21
Jul	25, 1929	279.25	Oct	14, 1929	602.80
Jul	26, 1929	174.65	Oct	16, 1929	617.40
Jul	27, 1929	87.50	Oct	19, 1929	519.30
Jul	27, 1929	429.40	Oct	22, 1929	406.05
Jul	30, 1929	86.35	Oct	24, 1929	582.70
Jul	31, 1929	315.30	Oct	28, 1929	696.15
Aug	1, 1929	280.70	Nov	1, 1929	399.80

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Nov	1, 1929	\$200.00	Mar	10, 1930	\$336.40
Nov	4, 1929	666.30	Mar	13, 1930	381.50
Nov	6, 1929	349.85	Mar	17, 1930	533.90
Nov	9, 1929	374.40	Mar	24, 1930	463.40
Nov	12, 1929	681.35	Mar	24, 1930	369.00
Nov	12, 1929	232.85	Mar	29, 1930	461.55
Nov	16, 1929	317.60	Apr	1, 1930	368.50
Nov	18, 1929	777.50	Apr	3, 1930	664.95
Nov	22, 1929	610.45	Apr	5, 1930	304.60
Nov	25, 1929	692.45	Apr	5, 1930	389.25
Nov	29, 1929	765.47	Apr	11, 1930	377.80
Dec	2, 1929	555.20	Apr	14, 1930	521.65
Dec	5, 1929	648.85	Apr	17, 1930	1000.00
Dec	9, 1929	626.55	Apr	19, 1930	579.35
Dec	12, 1929	583.85	Apr	21, 1930	644.75
Dec	16, 1929	694.30	Apr	22, 1930	302.65
Dec	20, 1929	267.70	Apr	24, 1930	167.00
Dec	23, 1929	354.80	Apr	28, 1930	670.85
Dec	26, 1929	568.10	May	2, 1930	449.20
Dec	30, 1929	650.95	May	5, 1930	594.20
Jan	2, 1930	663.85	May	8, 1930	325.25
Jan	6, 1930	480.55	May	12, 1930	746.70
Jan	9, 1930	386.15	May	16, 1930	451.05
Jan	13, 1930	640.60	May	16, 1930	102.15
Jan	17, 1930	492.70	May	19, 1930	559.95
Jan	20, 1930	649.60	May	21, 1930	191.60
Jan	24, 1930	440.55	May	26, 1930	668.85
Jan	27, 1930	486.65	May	29, 1930	235.15
Jan	30, 1930	382.70	Jun	2, 1930	599.45
Feb	2, 1930	639.55	Jun	5, 1930	404.95
		[546]	Jun	9, 1930	584.75
Feb	6, 1930	302.60	Jun	11, 1930	324.55
Feb	10, 1930	623.70	Jun	14, 1930	295.20
Feb	14, 1930	366.35	Jun	14, 1930	400.00
Feb	17, 1930	448.10	Jun	16, 1930	306.55
Feb	20, 1930	327.95	Jun	18, 1930	365.95
Feb	24, 1930	671.15	Jun	23, 1930	640.72
Feb	28, 1930	375.44	Jun	26, 1930	256.37
Mar	3, 1930	577.15	Jun	30, 1930	440.79
Mar	8, 1930	551.65	Jul	2, 1930	457.85

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Jul	3, 1930	\$211.50	Sep	18, 1930	\$305.40
Jul	5, 1930	475.85	Sep	19, 1930	185.05
Jul	7, 1930	354.45	Sep	20, 1930	118.35
Jul	10, 1930	398.85	Sep	22, 1930	367.90
Jul	14, 1930	446.85	Sep	23, 1930	110.00
Jul	16, 1930	314.00	Sep	24, 1930	200.45
Jul	21, 1930	679.65	Sep	25, 1930	154.30
Jul	24, 1930	248.10	Sep	26, 1930	92.85
Jul	28, 1930	408.70	Sep	27, 1930	74.05
Jul	30, 1930	225.20	Sep	29, 1930	429.55
Jul	31, 1930	174.50	Sep	30, 1930	54.95
Aug	1, 1930	170.00	Oct	1, 1930	191.60
Aug	4, 1930	555.50	Oct	2, 1930	130.15
Aug	6, 1930	266.70	Oct	3, 1930	64.35
Aug	6, 1930	239.25	Oct	4, 1930	120.05
Aug	11, 1930	313.80	Oct	6, 1930	423.90
Aug	16, 1930	344.50	Oct	7, 1930	96.00
Aug	16, 1930	385.00	Oct	8, 1930	131.95
Aug	16, 1930	250.00	Oct	9, 1930	126.95
Aug	18, 1930	384.10	Oct	10, 1930	68.70
Aug	20, 1930	227.70	Oct	11, 1930	177.25
Aug	21, 1930	165.23	Oct	13, 1930	562.25
Aug	25, 1930	521.18	Oct	14, 1930	167.15
Aug	27, 1930	325.25	Oct	15, 1930	129.05
Aug	29, 1930	309.85	Oct	17, 1930	228.45
Sep	2, 1930	453.90	Oct	20, 1930	717.15
Sep	2, 1930	144.50	Oct	22, 1930	229.30
Sep	3, 1930	197.55	Oct	23, 1930	202.45
Sep	5, 1930	193.00	Oct	27, 1930	713.54
Sep	6, 1930	100.05	Oct	29, 1930	103.85
Sep	8, 1930	292.50	Oct	30, 1930	268.70
Sep	9, 1930	93.40	Nov	3, 1930	604.55
Sep	10, 1930	253.50	Nov	5, 1930	258.40
Sep	11, 1930	133.95	Nov	7, 1930	212.80
Sep	12, 1930	89.65	Nov	10, 1930	507.50
Sep	13, 1930	98.90	Nov	12, 1930	333.25
		[547]	Nov	15, 1930	288.95
Sep	16, 1930	140.40	Nov	17, 1930	336.90
Sep	17, 1930	100.00	Nov	19, 1930	205.00
Sep	17, 1930	84.20	Nov	21, 1930	207.25

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Nov	24, 1930	\$511.20	Feb	24, 1931	\$118.00
Nov	26, 1930	164.75	Feb	24, 1931	394.05
Nov	28, 1930	277.35	Feb	26, 1931	101.15
Dec	1, 1930	493.85			[548]
Dec	3, 1930	173.45	Feb	28, 1931	184.45
Dec	5, 1930	276.15	Mar	2, 1931	256.10
Dec	6, 1930	109.35	Mar	6, 1931	148.15
Dec	8, 1930	474.60	Mar	6, 1931	174.20
Dec	10, 1930	221.75	Mar	9, 1931	388.40
Dec	11, 1930	128.60	Mar	10, 1931	112.75
Dec	13, 1930	189.15	Mar	16, 1931	475.85
Dec	15, 1930	502.40	Mar	19, 1931	298.75
Dec	17, 1930	370.80	Mar	21, 1931	603.85
Dec	19, 1930	205.55	Mar	28, 1931	289.75
Dec	20, 1930	169.95	Mar	31, 1931	312.15
Dec	22, 1930	517.75	Apr	2, 1931	143.20
Dec	24, 1930	240.00	Apr	4, 1931	198.30
Dec	26, 1930	511.00	Apr	6, 1931	330.80
Dec	29, 1930	658.65	Apr	8, 1931	167.65
Dec	31, 1930	274.55	Apr	11, 1931	225.20
Jan	2, 1931	379.36	Apr	11, 1931	240.00
Jan	3, 1931	112.50	Apr	13, 1931	373.95
Jan	5, 1931	434.85	Apr	15, 1931	157.25
Jan	7, 1931	199.60	Apr	17, 1931	203.10
Jan	9, 1931	184.45	Apr	20, 1931	501.50
Jan	12, 1931	533.35	Apr	22, 1931	160.68
Jan	14, 1931	234.25	Apr	27, 1931	426.90
Jan	16, 1931	120.10	Apr	29, 1931	153.30
Jan	19, 1931	290.45	May	1, 1931	187.92
Jan	21, 1931	207.50	May	2, 1931	70.50
Jan	24, 1931	216.10	May	4, 1931	292.10
Jan	26, 1931	247.65	May	6, 1931	103.60
Jan	30, 1931	187.25	May	7, 1931	33.25
Feb	2, 1931	275.15	May	8, 1931	31.45
Feb	5, 1931	283.35	May	9, 1931	49.10
Feb	9, 1931	250.00	May	11, 1931	319.55
Feb	9, 1931	443.80	May	12, 1931	53.55
Feb	11, 1931	272.60	May	13, 1931	71.20
Feb	16, 1931	462.05	May	14, 1931	62.75
Feb	20, 1931	294.08	May	15, 1931	87.65

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
May	16, 1931	\$ 32.85	Jul	9, 1931	\$119.50
May	18, 1931	240.30	Jul	13, 1931	348.65
May	18, 1931	88.10	Jul	14, 1931	73.70
May	20, 1931	45.75	Jul	15, 1931	44.55
May	20, 1931	41.70	Jul	17, 1931	134.90
May	22, 1931	158.65	Jul	20, 1931	298.25
May	23, 1931	125.90	Jul	21, 1931	62.95
May	25, 1931	152.55	Jul	22, 1931	74.00
May	25, 1931	150.00	Jul	25, 1931	37.85
May	26, 1931	96.05			[549]
May	27, 1931	57.00	Jul	27, 1931	389.27
May	28, 1931	48.70	Jul	28, 1931	48.90
May	29, 1931	196.50	Jul	29, 1931	80.70
May	29, 1931	65.00	Aug	1, 1931	135.70
Jun	2, 1931	621.30	Aug	3, 1931	277.80
Jun	3, 1931	38.60	Aug	4, 1931	117.30
Jun	4, 1931	33.30	Aug	5, 1931	41.45
Jun	5, 1931	103.65	Aug	6, 1931	30.10
Jun	6, 1931	68.30	Aug	7, 1931	82.50
Jun	8, 1931	214.75	Aug	10, 1931	319.55
Jun	9, 1931	41.10	Aug	11, 1931	60.60
Jun	10, 1931	86.00	Aug	12, 1931	60.25
Jun	12, 1931	133.80	Aug	14, 1931	132.60
Jun	13, 1931	46.10	Aug	17, 1931	336.05
Jun	15, 1931	236.40	Aug	18, 1931	58.25
Jun	15, 1931	346.70	Aug	20, 1931	99.05
Jun	16, 1931	94.20	Aug	22, 1931	151.25
Jun	18, 1931	104.20	Aug	24, 1931	308.30
Jun	19, 1931	78.15	Aug	25, 1931	72.75
Jun	20, 1931	53.00	Aug	26, 1931	67.60
Jun	22, 1931	201.55	Aug	28, 1931	173.65
Jun	23, 1931	90.20	Aug	29, 1931	218.90
Jun	24, 1931	66.00	Aug	31, 1931	412.65
Jun	25, 1931	37.70	Sep	1, 1931	129.95
Jun	27, 1931	106.95	Sep	2, 1931	62.75
Jun	29, 1931	201.10	Sep	3, 1931	103.30
Jul	1, 1931	122.95	Sep	4, 1931	100.90
Jul	3, 1931	192.00	Sep	5, 1931	88.70
Jul	6, 1931	658.15	Sep	8, 1931	348.65
Jul	7, 1931	119.75	Sep	9, 1931	43.90

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Sep	10, 1931	\$ 65.00	Oct	30, 1931	\$114.15
Sep	11, 1931	121.20	Oct	31, 1931	63.65
Sep	12, 1931	80.95	Nov	2, 1931	198.75
Sep	14, 1931	195.95	Nov	4, 1931	129.10
Sep	15, 1931	72.60	Nov	5, 1931	64.20
Sep	16, 1931	87.85	Nov	6, 1931	82.00
Sep	17, 1931	83.80	Nov	9, 1931	317.65
Sep	18, 1931	171.65	Nov	12, 1931	215.80
Sep	19, 1931	164.75	Nov	13, 1931	133.45
Sep	21, 1931	221.45	Nov	16, 1931	232.90
Sep	22, 1931	54.15	Nov	19, 1931	44.50
Sep	23, 1931	70.95	Nov	20, 1931	44.70
Sep	24, 1931	70.35	Nov	21, 1931	284.55
Sep	25, 1931	94.35	Nov	23, 1931	234.75
Sep	26, 1931	59.85	Nov	23, 1931	78.25
Sep	28, 1931	194.50			[550]
Sep	29, 1931	72.90	Nov	24, 1931	69.30
Oct	2, 1931	91.35	Nov	25, 1931	51.90
Oct	3, 1931	129.40	Nov	27, 1931	351.45
Oct	5, 1931	308.40	Nov	28, 1931	134.00
Oct	6, 1931	69.05	Nov	30, 1931	206.00
Oct	7, 1931	82.00	Dec	1, 1931	59.35
Oct	8, 1931	81.60	Dec	2, 1931	38.35
Oct	9, 1931	109.10	Dec	3, 1931	42.80
Oct	10, 1931	107.00	Dec	4, 1931	56.25
Oct	12, 1931	259.50	Dec	5, 1931	78.65
Oct	13, 1931	40.30	Dec	7, 1931	274.20
Oct	14, 1931	60.35	Dec	8, 1931	56.70
Oct	15, 1931	72.60	Dec	10, 1931	69.65
Oct	15, 1931	157.90	Dec	11, 1931	116.30
Oct	17, 1931	122.70	Dec	12, 1931	97.40
Oct	20, 1931	299.80	Dec	14, 1931	259.12
Oct	21, 1931	47.80	Dec	15, 1931	43.35
Oct	22, 1931	48.49	Dec	16, 1931	41.15
Oct	23, 1931	56.70	Dec	17, 1931	45.20
Oct	24, 1931	90.65	Dec	18, 1931	98.35
Oct	26, 1931	198.20	Dec	19, 1931	91.00
Oct	27, 1931	62.45	Dec	21, 1931	271.45
Oct	28, 1931	38.55	Dec	22, 1931	48.35
Oct	29, 1931	59.20	Dec	24, 1931	73.97

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Dec	26, 1931	\$175.55	Feb	16, 1932	\$104.00
Dec	26, 1931	254.30	Feb	17, 1932	66.05
Dec	29, 1931	75.55	Feb	18, 1932	76.60
Dec	31, 1931	81.75	Feb	19, 1932	72.90
Jan	2, 1932	265.05	Feb	23, 1932	241.00
Jan	4, 1932	224.85	Feb	24, 1932	30.40
Jan	5, 1932	40.50	Feb	26, 1932	87.55
Jan	6, 1932	31.80	Feb	27, 1932	53.15
Jan	7, 1932	46.35	Feb	29, 1932	253.05
Jan	8, 1932	53.05	Mar	1, 1932	72.10
Jan	9, 1932	57.85	Mar	2, 1932	97.45
Jan	11, 1932	295.75	Mar	3, 1932	36.00
Jan	12, 1932	35.90	Mar	4, 1932	48.60
Jan	13, 1932	30.40	Mar	5, 1932	51.60
Jan	14, 1932	44.00	Mar	7, 1932	237.55
Jan	15, 1932	109.55	Mar	8, 1932	64.15
Jan	18, 1932	308.90	Mar	15, 1932	158.00
Jan	19, 1932	39.35	Mar	16, 1932	43.40
Jan	20, 1932	36.85	Mar	17, 1932	33.70
Jan	21, 1932	46.70	Mar	18, 1932	43.65
Jan	22, 1932	48.30	Mar	21, 1932	328.80
Jan	23, 1932	60.05	Mar	22, 1932	65.30
Jan	25, 1932	257.57			[551]
Jan	26, 1932	39.90	Mar	25, 1932	104.90
Jan	27, 1932	65.95	Mar	26, 1932	45.55
Jan	28, 1932	29.00	Mar	28, 1932	179.80
Jan	29, 1932	28.05	Mar	29, 1932	43.05
Jan	30, 1932	61.55	Mar	31, 1932	73.10
Feb	1, 1932	252.55	Apr	1, 1932	33.70
Feb	1, 1932	270.00	Apr	2, 1932	50.60
Feb	2, 1932	59.70	Apr	4, 1932	274.60
Feb	3, 1932	96.95	Apr	5, 1932	104.15
Feb	4, 1932	94.40	Apr	6, 1932	57.95
Feb	5, 1932	39.40	Apr	7, 1932	60.90
Feb	6, 1932	56.60	Apr	8, 1932	79.40
Feb	8, 1932	228.55	Apr	9, 1932	77.15
Feb	9, 1932	68.25	Apr	11, 1932	231.45
Feb	10, 1932	130.05	Apr	12, 1932	54.40
Feb	11, 1932	99.40	Apr	13, 1932	93.05
Feb	15, 1932	357.55	Apr	14, 1932	37.40

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Apr	15, 1932	\$ 23.60	Jun	8, 1932	\$ 64.50
Apr	16, 1932	50.48	Jun	9, 1932	50.00
Apr	18, 1932	248.15	Jun	10, 1932	70.60
Apr	19, 1932	67.60	Jun	11, 1932	77.65
Apr	19, 1932	30.00	Jun	13, 1932	265.85
Apr	20, 1932	60.10	Jun	14, 1932	46.85
Apr	21, 1932	34.85	Jun	15, 1932	66.15
Apr	23, 1932	61.45	Jun	16, 1932	89.85
Apr	25, 1932	211.45	Jun	17, 1932	89.95
Apr	26, 1932	39.70	Jun	20, 1932	202.50
Apr	27, 1932	51.85	Jun	21, 1932	58.60
Apr	28, 1932	38.35	Jun	22, 1932	52.20
Apr	29, 1932	37.15	Jun	23, 1932	49.80
Apr	29, 1932	160.00	Jun	24, 1932	71.70
May	2, 1932	214.30	Jun	27, 1932	213.15
May	3, 1932	45.50	Jun	28, 1932	45.65
May	4, 1932	59.65	Jun	29, 1932	52.95
May	5, 1932	48.85	Jun	30, 1932	65.95
May	7, 1932	79.60	Jun	30, 1932	15.00
May	9, 1932	229.40	Jul	1, 1932	53.81
May	10, 1932	69.70	Jul	2, 1932	24.70
May	11, 1932	50.20	Jul	5, 1932	409.55
May	12, 1932	45.80	Jul	6, 1932	91.60
May	13, 1932	48.10	Jul	7, 1932	49.50
May	14, 1932	42.20	Jul	9, 1932	100.85
May	16, 1932	236.55	Jul	11, 1932	125.60
May	17, 1932	79.25	Jul	13, 1932	96.80
May	18, 1932	42.40	Jul	18, 1932	324.80
May	23, 1932	119.55	Jul	20, 1932	118.80
May	24, 1932	32.05	Jul	22, 1932	141.95
May	25, 1932	49.35			[552]
May	27, 1932	141.10	Jul	25, 1932	198.64
May	28, 1932	149.05	Jul	28, 1932	102.87
May	31, 1932	336.63	Jul	29, 1932	49.50
Jun	1, 1932	64.60	Jul	29, 1932	40.00
Jun	2, 1932	72.50	Aug	1, 1932	208.96
Jun	3, 1932	152.50	Aug	3, 1932	95.80
Jun	4, 1932	142.35	Aug	5, 1932	222.55
Jun	6, 1932	163.50	Aug	8, 1932	282.95
Jun	7, 1932	43.60	Aug	10, 1932	121.50

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Aug	11, 1932	\$ 74.20	Sep	6, 1932	\$347.25
Aug	13, 1932	148.25	Sep	8, 1932	157.10
Aug	15, 1932	230.70	Sep	10, 1932	115.75
Aug	19, 1932	266.40	Sep	12, 1932	173.75
Aug	22, 1932	229.70	Sep	15, 1932	155.00
Aug	24, 1932	154.65	Sep	19, 1932	196.65
Aug	25, 1932	38.15	Sep	20, 1932	69.15
Aug	29, 1932	357.65	Sep	26, 1932	537.80
Sep	1, 1932	167.70	Oct	1, 1932	348.40
Sep	6, 1932	49.80	Oct	8, 1932	190.00

[553]

DEFENDANT'S EXHIBIT U-1,

bank deposit book with the Miners and Merchants Bank from January 2, 1931, to May 12, 1933, both inclusive, reads: "The Miners and Merchants Bank, Ketchikan, Alaska, in account with Coliseum Theatre, Cr.

Deposits			Deposits		
Jan	2, 1931	\$468.90	Feb	6, 1931	\$ 83.80
Jan	5, 1931	367.65	Feb	7, 1931	73.00
Jan	9, 1931	271.70	Feb	9, 1931	80.40
Jan	12, 1931	395.65	Feb	9, 1931	176.70
Jan	16, 1931	163.60	Feb	11, 1931	58.30
Jan	15, 1931	146.85	Feb	11, 1931	85.75
Jan	19, 1931	426.35	Feb	13, 1931	64.85
Jan	24, 1931	316.60	Feb	13, 1931	158.45
Jan	26, 1931	365.60	Feb	14, 1931	146.40
Jan	27, 1931	160.35	Feb	16, 1931	87.55
Jan	28, 1931	49.85	Feb	16, 1931	176.35
Jan	30, 1931	34.30	Feb	18, 1931	125.00
Jan	30, 1931	55.75	Feb	18, 1931	81.35
Jan	31, 1931	67.20	Feb	19, 1931	77.40
Feb	2, 1931	120.80	Feb	20, 1931	76.85
Feb	2, 1931	210.26	Feb	24, 1931	95.45
Feb	3, 1931	86.30	Feb	24, 1931	89.20
Feb	5, 1931	53.65	Feb	24, 1931	343.30
Feb	5, 1931	47.90	Feb	24, 1931	139.80

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
Feb	26, 1931	\$ 62.65	Apr	6, 1931	\$253.60
Feb	28, 1931	33.25	Apr	8, 1931	131.80
Feb	28, 1931	121.15	Apr	8, 1931	63.65
Feb	28, 1931	103.25	Apr	11, 1931	45.15
Mar	2, 1931	97.60	Apr	11, 1931	114.25
Mar	2, 1931	179.30			[554]
Mar	3, 1931	53.00	Apr	11, 1931	88.05
Mar	4, 1931	170.65	Apr	13, 1931	92.90
Mar	5, 1931	100.95	Apr	13, 1931	183.40
Mar	6, 1931	142.65	Apr	14, 1931	54.50
Mar	7, 1931	114.25	Apr	14, 1931	125.00
Mar	9, 1931	87.65	Apr	15, 1931	63.15
Mar	9, 1931	261.80	Apr	18, 1931	27.75
Mar	10, 1931	92.15	Apr	18, 1931	104.25
Mar	12, 1931	68.50	Apr	18, 1931	167.95
Mar	12, 1931	49.00	Apr	21, 1931	122.00
Mar	16, 1931	62.30	Apr	21, 1931	316.05
Mar	16, 1931	53.85	Apr	22, 1931	76.20
Mar	16, 1931	81.75	Apr	22, 1931	45.90
Mar	16, 1931	249.75	Apr	24, 1931	53.95
Mar	18, 1931	80.70	Apr	24, 1931	95.90
Mar	18, 1931	79.50	Apr	27, 1931	113.55
Mar	20, 1931	55.50	Apr	27, 1931	98.30
Mar	20, 1931	110.70	Apr	27, 1931	147.80
Mar	23, 1931	127.80	Apr	30, 1931	37.15
Mar	23, 1931	120.20	May	1, 1931	97.00
Mar	23, 1931	203.95	May	4, 1931	272.70
Mar	24, 1931	65.40	May	8, 1931	258.50
Mar	25, 1931	61.10	May	11, 1931	461.00
Mar	26, 1931	28.30	May	14, 1931	227.00
Mar	27, 1931	89.60	May	16, 1931	303.00
Mar	28, 1931	83.85	May	18, 1931	334.40
Mar	30, 1931	121.10	May	22, 1931	220.55
Mar	30, 1931	246.40	May	25, 1931	385.70
Mar	31, 1931	82.75	May	28, 1931	181.75
Apr	3, 1931	30.10	June	1, 1931	496.60
Apr	3, 1931	48.00	June	4, 1931	20.35
Apr	3, 1931	116.35	June	8, 1931	407.40
Apr	4, 1931	97.85	June	11, 1931	160.80
Apr	6, 1931	72.65	June	15, 1931	384.15

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
June	19, 1931	\$215.90	Nov	2, 1931	\$383.70
June	22, 1931	320.10	Nov	7, 1931	318.00
June	26, 1931	274.40	Nov	9, 1931	261.95
June	29, 1931	414.55	Nov	14, 1931	267.25
July	3, 1931	209.20	Nov	16, 1931	207.25
July	6, 1931	623.70	Nov	21, 1931	166.00
July	10, 1931	253.70	Nov	24, 1931	261.70
July	13, 1931	300.90	Nov	25, 1931	85.35
July	20, 1931	446.00	Nov	30, 1931	360.80
July	22, 1931	160.95	Dec	7, 1931	460.75
July	24, 1931	216.15	Dec	8, 1931	27.55
July	27, 1931	456.55	Dec	15, 1931	92.65
July	28, 1931	142.00	Dec	18, 1931	95.45
July	31, 1931	148.65			[555]
Aug	3, 1931	299.25	Dec	21, 1931	179.10
Aug	7, 1931	126.05	Dec	26, 1931	257.85
Aug	10, 1931	276.95	Jan	4, 1932	614.05
Aug	13, 1931	102.90	Jan	18, 1932	221.45
Aug	17, 1931	384.30	Jan	25, 1932	195.20
Aug	20, 1931	191.35	Feb	1, 1932	242.65
Aug	24, 1931	644.85	Feb	8, 1932	283.40
Aug	28, 1931	326.45	Feb	16, 1932	192.90
Aug	31, 1931	471.10	Feb	16, 1932	48.95
Sep	2, 1931	238.35	Feb	23, 1932	216.75
Sep	4, 1931	185.85	Feb	29, 1932	444.35
Sep	8, 1931	412.50	Mar	7, 1932	345.65
Sep	10, 1931	210.50	Mar	14, 1932	336.30
Sep	14, 1931	556.35	Mar	21, 1932	325.50
Sep	17, 1931	165.00	Mar	28, 1932	376.40
Sep	21, 1931	505.25	Apr	4, 1932	395.05
Sep	25, 1931	339.20	Apr	8, 1932	70.55
Sep	28, 1931	353.30	Apr	11, 1932	358.45
Oct	2, 1931	246.40	Apr	18, 1932	310.40
Oct	5, 1931	363.35	Apr	25, 1932	331.75
Oct	13, 1931	421.35	May	2, 1932	200.00
Oct	17, 1931	297.30	May	7, 1932	158.25
Oct	20, 1931	91.30	May	9, 1932	142.55
Oct	20, 1931	358.20	May	16, 1932	217.50
Oct	26, 1931	540.20	May	23, 1932	253.05
Oct	31, 1931	289.30	May	23, 1932	300.00

(Testimony of Charles M. Tuckett.)

Deposits			Deposits		
May	31, 1932	\$212.80	Nov	7, 1932	\$298.50
June	6, 1932	237.65	Nov	10, 1932	150.00
June	13, 1932	238.00	Nov	14, 1932	237.25
Jun	22, 1932	159.00	Nov	23, 1932	218.40
Jun	28, 1932	98.70	Nov	26, 1932	125.00
Jul	5, 1932	205.50	Nov	29, 1932	214.95
Jul	9, 1932	162.00	Dec	5, 1932	238.75
Jul	11, 1932	47.50	Dec	13, 1932	290.10
Jul	16, 1932	180.60	Dec	17, 1932	125.00
Jul	19, 1932	64.50	Dec	19, 1932	171.30
Jul	23, 1932	1757.70	Dec	27, 1932	209.80
Jul	25, 1931	182.35	Jan	3, 1933	228.95
Jul	25, 1931	82.30	Jan	9, 1933	231.15
Jul	30, 1931	122.88	Jan	17, 1933	303.10
Aug	1, 1931	195.95	Jan	23, 1933	199.15
Aug	8, 1931	231.64	Jan	27, 1933	42.33
Aug	10, 1932	91.50	Feb	1, 1933	163.15
Aug	15, 1932	207.84	Feb	6, 1933	274.80
Aug	19, 1932	140.29	Feb	15, 1933	210.95
Aug	23, 1932	104.85	Feb	21, 1933	148.95
Aug	29, 1932	220.60	Feb	27, 1933	190.45
Sep	6, 1932	260.95	Mar	13, 1933	122.35
Sep	10, 1932	255.20	Mar	20, 1933	121.30
Sep	13, 1932	96.75	Mar	27, 1933	201.40
Sep	17, 1932	289.70	Apr	1, 1933	50.00
Sep	19, 1932	172.65	Apr	3, 1933	98.85
Sep	26, 1932	311.95	Apr	11, 1933	189.75
Oct	3, 1932	254.95	Apr	18, 1933	134.40
Oct	10, 1932	404.85	Apr	22, 1933	50.00
Oct	15, 1932	200.00	Apr	25, 1933	91.25
Oct	17, 1932	180.08	Apr	25, 1933	20.00
Oct	26, 1932	346.50	May	12, 1933	36.65
Oct	31, 1932	397.75			[556]

DEFENDANT'S EXHIBIT U-2,

bank deposit book with The B. M. Behrends Bank from October 6, 1932 to August 14, 1933, both inclu-

(Testimony of Charles M. Tuckett.)

sive, reads: "The B. M. Behrends Bank in account with Coliseum Theatre, Juneau, Cr.

Deposits			Deposits		
Oct	6, 1932	\$169.45	Feb	8, 1933	\$ 75.30
Oct	10, 1932	416.25	Feb	13, 1933	386.25
Oct	10, 1932	100.00	Feb	17, 1933	94.25
Oct	13, 1932	264.30	Feb	20, 1933	303.10
Oct	17, 1932	386.95	Feb	27, 1933	509.65
Oct	19, 1932	157.95	Mar	13, 1933	372.50
Oct	22, 1932	107.20	Mar	13, 1933	350.00
Oct	24, 1932	238.90	Mar	15, 1933	83.85
Oct	26, 1932	104.55	Mar	20, 1933	374.90
Oct	27, 1932	73.35	Mar	25, 1933	136.60
Oct	31, 1932	363.80	Mar	27, 1933	173.25
Nov	3, 1932	162.20	Mar	28, 1933	52.05
Nov	7, 1932	370.10	Mar	29, 1933	48.60
Nov	14, 1932	474.00	Mar	29, 1933	60.00
Nov	21, 1932	497.10	Apr	3, 1933	254.35
Nov	25, 1932	338.50	Apr	10, 1933	258.45
Nov	28, 1932	357.70	Apr	12, 1933	145.58
Dec	2, 1932	185.70	Apr	17, 1933	272.25
Dec	7, 1932	81.15	Apr	19, 1933	58.15
Dec	12, 1932	387.20	Apr	20, 1933	38.20
Dec	16, 1932	188.90	Apr	24, 1933	280.98
Dec	16, 1932	60.00	Apr	26, 1933	75.60
Dec	19, 1932	245.80	May	1, 1933	162.50
Dec	22, 1932	116.05	Jun	19, 1933	225.50
Dec	27, 1932	406.30	Jun	19, 1933	400.00
Dec	31, 1932	230.50	Jun	19, 1933	860.00
Jan	4, 1933	329.50	Jun	26, 1933	80.00
Jan	6, 1933	162.50	Jun	29, 1933	40.00
Jan	9, 1933	201.35	Jun	29, 1933	120.00
Jan	16, 1933	460.55	Jul	3, 1933	160.00
Jan	23, 1933	404.70	July	7, 1933	225.00
Jan	25, 1933	140.80	Jul	8, 1933	90.15
Jan	30, 1933	336.30	Jul	12, 1933	204.00
Feb	1, 1933	110.55	Aug	14, 1933	425.00
Feb	6, 1933	278.40			[557]

E. B. CLAYTON

E. B. Clayton, defendant's witness, being first duly sworn testified:

Direct Examination

I have been a motion picture operator and electrician for about ten years, mostly employed in Seattle with the John Dane Theatre Company; I have had experience in installation of sound equipment through a firm that manufactures them in Seattle and I have studied up on the subject through books and magazines; I have been employed as installation engineer for a sound equipment concern for about two years; I first met Defendant Gross around December, 1929; I know what is meant by servicing equipment when that term is employed by those engaged in the sound equipment business or the motion picture business generally:

“Q. Will you tell us what is meant by that term when it is so used by people so engaged?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial, an attempt to vary the terms of a written instrument.

The COURT: He may answer.

Mr. ROBERTSON: Exception.

A. ‘Service’ to us, means to go out into a house where the equipment is out of repair and put this equipment back into repair. That is what we call service. Inspection and minor adjustment.

(Testimony of E. B. Clayton.)

Mr. ROBERTSON: He didn't ask about inspection and minor adjustment. Same objection.

The COURT: Same ruling.

Mr. ROBERTSON: Exception.

A. Inspection and minor adjustment—we go into a theatre and look over the equipment that is in repair, look over the equipment, make a few minor adjustments and inspect it and see it is in proper shape so in case there are some small troubles it won't be large enough to shut the equipment down altogether."

Thereupon Witness Clayton further testified: I entered defendant's employ in May, 1930; I was to take care of service on sound equipment they had in the small towns and I was operator of his Haines Theatre; I was designated as service man for defendant's Ketchikan and Juneau Theatres if the operators in those two towns were unable to fix their trouble I would be called on to come down and rectify it; I was never called on. [558]

Cross Examination

Thereupon Witness Clayton further testified: I was engaged in installing Masterphone Sound Equipment for about two years previous to 1930 in Seattle, and prepared myself on Richardson's Handbook and electrical books, and whenever the Radio Monthly Digest came out I would read up on those and I had a set of Hawkins' Electrical Books and

(Testimony of Harold L. Stabler.)

numerous trade books during that time; I remained in defendant's employ for about two years, from May, 1930, until about the first of 1932. [559]

HAROLD L. STABLER

Harold L. Stabler, defendant's witness, being first duly sworn, testified:

Direct Examination

I am a public accountant, having had extensive study and experience over about six or seven years and employed as such and engaged in the business; I know defendant Gross and Witness Tuckett and I am familiar with the Juneau Coliseum Theatre; I assisted Tuckett in preparing these statements, exhibits Series I and K, which are a series of work sheets which I worked up with the assistance of Tuckett who was familiar with the books of the Coliseum Theatre; he furnished me with these figures; these check books, exhibits H-1 to H-7, both inclusive, are books of original entry of the Juneau and Ketchikan Theatres and the Alaska Film Exchange and I am familiar with them; these exhibits, Series I and K, were prepared by taking these books of original entry, exhibits H-1 to H-7, both inclusive, going through them carefully, checking over item by item and extracting the Coliseum Theatre expenses only; we extracted the items of expense concerning the Coliseum Theatre in these books and worked them on the work sheets; against

(Testimony of Harold L. Stabler.)

that we checked the gross receipts and arrived at the net profit and loss for each individual month. We then took each year separately and worked up an average monthly profit or loss for the year, and in going over these items from the book of original entry here we were very particular to pick out on the Coliseum Theatre Juneau and the Coliseum Theatre expenses of Ketchikan; those books contain many items not pertaining to those two theatres; we were very careful in the work: I should say that exhibits Series I and K with their appendant members are very closely accurate, mathematically as accurate as possible; this book, defendant's exhibit H-2, is a combined day book, cash journal, and checking journal and also contains the elements of a ledger; all kept in one book; defendant's exhibit W for identification is a report of the average profit and [560] loss statement for the Ketchikan Coliseum Theatre, taken from Shearer's reports offered in evidence, and shows an average loss of \$273.73 for May and June, 1933, an average profit for July, 1933, to December, 1934, of \$629.70.

Whereupon defendant's exhibit W for identification was offered in evidence, to which plaintiff objected on the ground that it was incompetent, irrelevant, and immaterial, and not the true measure of damages, which objection was overruled, to which ruling plaintiff then excepted. Whereupon said document was admitted in evidence, marked

(Testimony of Harold L. Stabler.)

DEFENDANT'S EXHIBIT W,

and reads:

AVERAGES AS PER SHEARER'S REPORTS

Coliseum Theatre—Ketchikan, Alaska.

		Loss	Profit
May	1933	203.68	
June	1933	343.79	
		547.47	

\$ 547.47 divided by 2 273.1/2—Average Net Profit.

July	1933		\$ 177.94
Aug.	1933	\$ 60.92	
Sept.	1933		856.49
Oct.	1933		242.12
Nov.	1933		315.69
Dec.	1933	414.92	
Jan.	1934	108.18	
Feb.	1934		114.37
Mar.	1934		778.97
Apr.	1934		470.91
May	1934		838.14
June	1934		380.20
July	1934		1041.64
Aug.	1934		1222.76
Sept.	1934		1798.96
Oct.	1934		1621.76
Nov.	1934		1555.52
Dec.	1934		503.15
		\$ 584.02	\$11918.62
			584.02
			\$11334.60

\$11334.60 divided by 18 months \$629.70—Average Profit per month over a period of 18 months, from July, 1933, to December, 1934, inclusive.

(Testimony of Harold L. Stabler.)

Thereupon Witness Stabler further testified: Defendant's exhibit W-1 for identification is the average profit and loss statement for the Juneau Coliseum Theatre, taken from Shearer's reports and separates the first two months of May and June and [561] averages the other months.

Thereupon defendant's exhibit W-1 for identification was offered in evidence, to which plaintiff objected on the ground it was incompetent, irrelevant, and immaterial, and not the true measure of damages, which objection was overruled, to which plaintiff then excepted. Whereupon said document was received in evidence marked

(Testimony of Harold L. Stabler.)

DEFENDANT'S EXHIBIT W-1,

and reads:

AVERAGES AS PER SHEARER'S REPORTS

Coliseum Theatre—Juneau, Alaska

		Loss	Profit
May	1933	\$ 50.56	
June	1933	164.64	
		<hr/>	
		\$ 215.20	

\$215.20 divided by 2 = \$107.60 = Average Net Loss.

July	1933		\$ 521.85
Aug.	1933	\$ 349.42	
Sept.	1933	324.73	
Oct.	1933	549.49	
Nov.	1933	207.06	
Dec.	1933	559.74	
Jan.	1934	178.05	
Feb.	1934	132.05	
Mar.	1934	319.49	
Apr.	1934	256.01	
May	1934	222.15	
June	1934	737.58	
July	1934	476.66	
Aug.	1934	69.81	
Sept.	1934		173.52
Oct.	1934	499.78	
Nov.	1934	350.50	
Dec.	1934	80.00	
		<hr/>	
		\$ 5312.52	\$ 495.37
		495.37	
		<hr/>	
		\$ 4817.15	

\$4817.15 divided by 18 = \$267.62 Average Net Loss
for period of 18 months.

(Testimony of Harold L. Stabler.)

Thereupon Witness Stabler further testified: Defendant's exhibit W-1 shows an average loss of \$107.60 in May, 1933, and the average loss between July, 1933, and December, 1934, is \$276.62, per month; the average loss for May and June, 1933, for [562] the Ketchikan Theatre shown on defendant's exhibit W is \$273.73½, and the average profit for July, 1933 to December, 1934, is \$629.70 per month; Defendant's exhibit W-2 for identification is a profit and loss statement for the Ketchikan Coliseum Theatre covering two periods from June 1, 1929, to May 1, 1931, and from May 1, 1931, to May 1, 1933, showing the average monthly losses or profits and the difference between the average for those two periods.

Thereupon defendant's exhibit W-2 for identification was offered in evidence, to which plaintiff objected on the ground it was incompetent, irrelevant, and immaterial, and not the true measure of damages, which objection was overruled, to which plaintiff then excepted, whereupon said document was received in evidence, marked

(Testimony of Harold L. Stabler.)

DEFENDANT'S EXHIBIT W-2,

and reads:

Coliseum Theatre
Ketchikan, Alaska

STATEMENT OF LOSS

\$2476.96 Average monthly profit June 1, 1929 to
May 1, 1931 (23 mths)

187.55 Average monthly profit May 1, 1931 to
May 1, 1933 (24 mths)

\$2289.41 Average loss per month.

\$2289.41 multiplied by 24 months equals \$54945.84
—Total loss before depreciation.

Summary:

Average monthly profit from June 1, 1929 to
May 1, 1931 period during which Erpi equip-
ment was installed (23 mths)\$ 2476.96

Average monthly profit from May 1,
1931 to May 1, 1933 period during
which Erpi equipment was NOT in-
stalled (24 mths.)..... 187.55

Average monthly loss during period
between removal of Erpi equipment
and Shearer lease..... 2289.41

Total loss during 21 months period be-
tween removal of Erpi equipment
and Shearer lease..... 48077.61

* * * * *

(Testimony of Harold L. Stabler.)

THE FOLLOWING RESULTS ARE FIGURED AS ABOVE WITH THE EXCEPTION THAT DEPRECIATION IS CONSIDERED.

\$2000.52 Average monthly profit June 1, 1929 to May 1, 1931 (23 mths)

187.70 Average monthly loss May 1, 1931 to May 1, 1933 (24 mths.)

\$2188.22 Average loss per month.

\$2188.22 multiplied by 24 months equals \$52517.28
—total loss after depreciation.

Summary:

Average monthly profit from June 1, 1929 to May 1, 1931 period during which Erpi equipment was installed (23 months.)\$2000.52

[563]

Average monthly loss from May 1, 1931 to May 1, 1933 period during which Erpi equipment was NOT installed24 mths. 187.70

Average monthly loss during period between removal of Erpi equipment and Shearer lease..... 2188.22

Total loss during 21 months period between removal of Erpi equipment and Shearer lease..... 44952.26

(Testimony of Harold L. Stabler.)

Thereupon Witness Stabler further testified: The average monthly profit for the period of June 1, 1929, to May 1, 1931, 23 months at the Ketchikan Theatre was \$2,476.96, without depreciation, and between May 1, 1931, and May 1, 1933, 24 months, was \$187.55, without depreciation; and the difference between the two periods was \$2,289.41, that constituted the average loss per month, which, multiplying \$2,289.41 by 24 would be \$54,945.84, the total loss during May 1, 1931 to May 1, 1933, before depreciation is taken; that summary following that statement shows the average monthly profit from June 1, 1929 to May 1, 1931, or a period during which plaintiff's equipment was installed, 23 months, average profit of \$2,476.96, and average monthly profit from May 1, 1931, to May 1, 1933, during which plaintiff's equipment was not installed, 24 months, of \$187.55; average monthly loss during the period between the removal of plaintiff's equipment and the Shearer lease \$2,289.41, also gives a total loss during the period between removal of plaintiff's equipment and the Shearer lease, total loss of \$48,077.61, before depreciation was taken; it also shows the figures after depreciation had been taken, namely average monthly profit, 23 months, from June 1, 1929, to May 1, 1931, \$2,000.52; average monthly loss from May 1, 1931, to May 1, 1933, 24 months \$187.70; average monthly loss during period between removal of plaintiff's equipment and Shearer lease \$2,188.22; total loss during 21 months, the period between removal of plaintiff's equipment and the Shearer lease \$44,-

(Testimony of Harold L. Stabler.)

952.62 after depreciation; I don't know why this figure is 21 months rather than 24 months; that is the figures you gave me; defendant's exhibit W-3 for identification is a statement of loss covering the Juneau Coliseum Theatre, similar to previous exhibits, but showing different figures. [564]

Thereupon defendant's exhibit W-3 for identification was offered in evidence, to which plaintiff objected on the ground it was incompetent, irrelevant, and immaterial, and not the true measure of damages, which objection was overruled, to which ruling plaintiff then excepted: Thereupon said document was received in evidence, marked

DEFENDANT'S EXHIBIT W-3

and reads:

Coliseum Theatre—Juneau, Alaska

STATEMENT OF LOSS

\$1404.46	Average monthly profit May 1, 1929 to May 1, 1931 (24 mos)
64.17	Average monthly profit May 1, 1931 to May 1, 1933 (24 mos)
<hr/>	
\$1340.29	Average loss per month
\$1340.29	multiplied by 24 months=\$32166.96— Total loss before depreciation

Summary:

Average monthly profit from May 1,
1929 to May 1, 1931 period during
which Erpi equipment was installed
(24 mos.)\$ 1404.46

(Testimony of Harold L. Stabler.)

Average monthly profit from May 1, 1931 to May 1, 1933 period during which Erpi equipment was NOT installed (24 mos.)..... 64.17

Average monthly loss during the period between removal of Erpi equipment and Shearer lease..... \$1340.29

Total loss during 21 1/3 month period between removal of Erpi equipment and Shearer lease.....\$28592.85

* * * * *

THE FOLLOWING RESULTS ARE FIGURED AS ABOVE WITH THE EXCEPTION THAT DEPRECIATION IS CONSIDERED.

\$864.15 Average monthly profit May 1, 1929 to May 1, 1931 (24 months)

489.98 Average monthly loss May 1, 1931 to May 1, 1933 (24 mos.)

\$1354.13 Average loss per month.

1354.13 multiplied by 24 months equals \$32499.12 total loss after depreciation

Summary:

Average monthly profit from May 1, 1929 to May 1, 1931 period during which Erpi equipment was installed (24 mos.) \$864.15

(Testimony of Harold L. Stabler.)

Average monthly loss from May 1, 1931 to May 1, 1933 period during which Erpi equipment was NOT installed (24 months).....	489.98
Average monthly loss during period between removal of Erpi equipment and Shearer lease.....	1354.13
Total loss during 21 1/3 month period, (with depreciation considered) between removal of Erpi equipment and Shearer lease.....	\$28888.10
	[565]

Whereupon Witness Stabler read defendant's Exhibit W-3 to the jury.

Cross Examination.

Thereupon Witness Stabler further testified: Those exhibits W, W-1, W-2, and W-3, were made last night and were compiled from the average profit and loss statements, defendant's exhibits Series I and K, and the Shearer figures were taken from the Shearer statements: I have no personal knowledge of any of the facts or figures contained in any of those exhibits or of the figures in defendant's exhibits Nos. H-1 to H-7, both inclusive; I could say that the yellow work sheets were taken by Mr. Tuckett and I actually from the books and from those checks we compiled the rest; I never had anything to do with the keeping of those books,

(Testimony of Harold L. Stabler.)

exhibits H-1 to H-7, and never made any entries in them; the first time I ever saw them was the first few days of this trial; I know nothing about them except as appears from the face of the books themselves and what Tuckett told me; that type is usually known as books of original entry, but as far as whether it is a book of original entry I was not a witness, I was not there when the entries were made; that part of exhibit H-6 for the month of September, 1929, sort of lined off with columns headed "Receipts for month of September, 1929, \$6,682.75, and below "Paid out for month of September, 1929, \$4,513.97"—all the figures on that page could constitute a part of a journal because a journal is generally a segregation or compilation of the month's figures; wherever in those books the pages are ruled off and lined and segregated in that same manner, it may be considered as a journal, also straight explanatory remarks in a book of that sort may be considered as a journal; that is the part of it that I would call the journal; it wouldn't be entirely wrong to call it in part a ledger because these checks are all carried; if there had been an elaborate set of books carried down there, each check in this book would have been carried through the journal and into the main ledger; I have not seen a ledger; everything is carried for income tax, work and everything; it is a set of books itself, in the form of a record, I [566] believe in the form of a record; I believe I saw the records also; I have

(Testimony of Harold L. Stabler.)

not had occasion to go into anything further than these books; there must be some record further. I might [567] say any of these entries could be carried forward and called ledger entries; there is not a bound book, set of books, down there, jotting them down on some other piece of paper and made into ledger form would be equal to the same thing; there is not a ledger in these books themselves; I don't know whether I saw some other sheets down there where those items were carried forward which have not been produced in the court room, but I saw some sheets pertaining to items in these books, but I believe everything I saw down there in the form of books, the figures have all been compiled from those; the information in this book is carried forward in part of the Colesium theatre at Ketchikan and Juneau, showing receipts and expenditures, carried forward into their profit and loss statement and that profit and loss statement constitutes part of their books; there is also other expenses covering apartment house business too; I recognize those exhibits Series I and K; no books, records or documents were used in preparing them other than those exhibits H-1 to H-7; copies of defendant's income tax returns were the basis of and used for some of the figures in preparing defendant's exhibits Series I and K in the preparation whereof we excluded numerous certain items shown in exhibits H-1 to H-7; nobody except Tuckett told me to exclude them; I had no personal knowledge

(Testimony of Harold L. Stabler.)

as to whether or not they should be excluded; I have no personal knowledge of the books at all; I don't know when the strike-outs, appearing at the top of the page headed April, 1931, in defendant's exhibit H-3 were made; I don't know when those figures in blue lead pencil, \$3,042.83, were put on there; I didn't see it done; the lead pencil figures in that same exhibit on the page marked "Receipts for month of January 1931," were not made by me; I don't know whose they are; I didn't make them when checking the book over with Tuckett; I don't know when the corrections or strike-outs were made on that page; I don't know when the check-marks in red and blue pencil were put in exhibit H-7 on the page headed "Cash in Bank for December, 1932, \$1,035.31." I made no marks in this book whatever and didn't see any made at any time; Tuckett was making some marks [568] as he went along, but so far as I know they were only check-marks; I don't know what marks he was making in the books at that time; I was first employed by defendant the first day of the trial or one of the first days; I had never been in his employ prior to helping Tuckett compile these various statements that have been introduced as exhibits; I am not a certified public accountant; my chief business right now is the brokerage business and business accounting on the side; as nearly as possible we checked back all the additions and various figures on defendant's exhibits Series I and K; as

(Testimony of Harold L. Stabler.)

nearly as humanly possible we got them correct; defendant's exhibit K-3 is a profit and loss statement of the Juneau Coliseum Theatre for January 1931, to December, 1931, showing general receipts—

A. Receipts \$3,347.41, for January.

Q. What expenses?

A. Total expenses \$3,206.23.

Q. What does it show for profit or loss?

A. Shows net profit \$161.18.

Q. What does it show for February?

A. February \$3,078.58 receipts.

Total expenses \$4,488.26; net loss
\$1,419.58.

Q. What does it show for March?

A. March \$3,059.95 total receipts; \$2,902.00
total expenses; profit \$157.95.

Q. What for April?

A. April \$3,042.83; \$3,295.86 for total ex-
penses, or a net loss of \$253.03.

Q. That was for 1931?

A. First few months of 1931, yes sir. [569]

LOUIS LEMIEUX,

defendant's witness, being first duly sworn, testified:

Direct Examination.

I am familiar with defendant's Juneau and Ket-
chikan Theatres; I know defendant and have been
in his employ from January 1, 1926, until the

(Testimony of Louis Lemieux.)

present date; I live in Juneau; I was in Juneau when sound equipment was installed in defendant's Juneau Theatres, about the middle of May, 1929, and met Taylor, plaintiff's sound and installation engineer; I took instruction from him in the operation, repair, and upkeep of sound equipment, by starting in unpacking and checking all the different parts of the equipment, consisting of about forty boxes and cases and then proceeding to learn the names of the various parts and what they were for, Taylor instructing us on that part of it. We went ahead and installed the machines, with Taylor doing practically all the work so we would know more about the assembling and operation of the machines after they were set up; also he gave some instructions as to the operation and function of the amplifier; aside from that we were issued a book from plaintiff quite extensive operating instructions; about six months later I sent to New York for Richardson's Handbooks on operation, three volumes, costing about \$11.00 at that time; practically all operators make the investment of these books at one time or another; at that time Richardson issued a book on sound which we considered very valuable and bought it; I didn't go to Ketchikan at that time; Taylor stayed in Juneau a week or so after the installation, then he went to Ketchikan and installed there, after which he returned to Juneau and I saw him here in Juneau in the early part of July, 1929; I know Witness Wilcox, met him

(Testimony of Louis Lemieux.)

in July, 1929; I was present when Wilcox, Taylor, and Gross had a conversation in the booth at the Coliseum Theatre; there was quite a bit of conversation; Wilcox sat in the auditorium the first time and listened to the sound; we put on reproductions of both the disc and film so he could hear the difference between the two; [570] he visited the operating room where we were introduced to him by Taylor, as head of the Service Department of the Western Division; at that time Taylor had been two months in Alaska; the weather was fine but he was anxious to get away so he could enjoy good weather at his home wherever he lived; he expressed a desire to return home so he could enjoy the summer weather; Wilcox told him then, if he thought he had the equipment in good running order, he could leave because Gross had no service and there was nothing to stay for; I remained in Juneau two or three months, then I left for Ketchikan in August, 1929, and was there in September, 1929; I took care of the equipment in Juneau after Taylor left, Tuckett being at that time in Ketchikan; I don't remember Albright; I remember Knowlton; some of the service engineers stayed for such a short time that I can't remember them completely now; in looking over the service reports I recognize the names but couldn't testify anything pertaining to them; most of them came through on the boats and visited while the boats were in ports; Knowlton was the only one we had a real visit with at that time and I got very well acquainted with him.

(Testimony of Louis Lemieux.)

After I went to Ketchikan, myself and operator took care of the Ketchikan equipment; none of the service men ever did anything in the way of repairing or keeping that equipment in repair; they used to come in, present their credentials for identification, asked if we had any trouble during the period we were alone; if so, we would tell them what it was, if not they would go over the machines in a sort of inspection; if they found nothing wrong they did nothing, if they found anything wrong they would tell us what necessary adjustments to make, but they very rarely made any adjustments themselves, the operator and myself working with them on the inspection made them; we inspected the machinery about an hour before the show each night; if minor adjustments were necessary we made them at that time; if the machine showed any trouble, the next day we made the inspection early so we would have it fixed by evening; if things ran right we wouldn't start our inspection until about an hour before the show; some of these [571] service engineers found minor adjustments to make because at that time we were running the machines pretty hard, especially in Ketchikan. I did all the previewing for the circuit; I looked over every reel of film that came on the steamers on each shipment from Seattle; besides running the regular show four or five hours, I had the preview after midnight of pictures to be shown the following week, giving the machines 2 or 3 hours more service at night; the reason the

(Testimony of Louis Lemieux.)

engineers found minor adjustments necessary was that they would come in the next morning after the previous night's run; if any of the tubes were weakened in the machines they would generally show up after that long run; the fact was we could find those minor adjustments ourselves on the next try-out of the show, just as well as the engineer could do it; but we didn't look for them until evening unless we had trouble or had to change the sound or something.

The engineers compared more to our weekly inspections, when we started right at one end of the equipment and went through to the other end, that is we tightened up on the machines, there is quite a few set screws liable to work loose through vibration; I used to have the operator go over them once a week thoroughly; all the tubes were cleaned, all the prongs on the tubes where they contact the equipment, were cleaned, and all the rheostats connected with the sound; we went backstage and cut out the speaker units and inspected the horns; our inspections on Saturday lasted from about eleven in the morning until about three or four in the afternoon, during which we went over the machines as thoroughly as we knew how; we did that once a week in addition to our daily inspection.

Taylor was in Juneau once right after the installation when I had fader trouble, but none of the service engineers were ever here after that when I had trouble, which was on two or three different

(Testimony of Louis Lemieux.)

occasions and myself and operator fixed it; at one time the motor control box didn't work and the machine that controls the speed of the motor; it worked the night before and the next day the operator discovered the left-hand machine didn't run, which meant we could only run one machine, which is very dissatisfying to the [572] audience, making a wait of a minute or a minute and a quarter between each reel; operator Ralph Bontrager fixed that under my supervision; another time during the night we got a very pronounced hum in our equipment so after experiments and trials and eliminations we found the trouble in the ground in this box Lawrence tested; we tried another ground on it and it gave us the same noise as usual, but so long as we had the ground disconnected the noise stopped when we would turn on the sound; so then we went to the back end of the building with a wire and put another ground on it and finally got a ground that would work on it and left it that way until the engineer, Foulon, came up two or three weeks later and he did the same thing, a different ground on the equipment; I don't know what effect the absence of a ground would have, it might overload some of the parts and in case of leakage of electricity somewhere in the circuit I imagine the safety factor would be eliminated; the effect on sound reproduction was no different in the quality of sound without the ground but the hum was remedied; if we hadn't taken the ground off entirely

(Testimony of Louis Lemieux.)

and left the hum we could not have run the show; the service engineer made an inspection and visited us but not at the time of the trouble; I might have been able to have gotten in touch with one but I knew he would not have got there to help us, so I didn't even bother to telegraph.

We also had fader trouble; I had Taylor work on it and he was anxious to get to Seattle and never repaired it and left instructions with me if it kept on doing that to send it to Seattle and get another fader and install it; that was the day he left; after he left I went to the operating room; there was quite a bit of trouble on the next showing; I went to the operating room and discovered the trouble myself and had an electrician come over and solder a broken wire; one of the connections was broken; I found a broken wire and had the light company man solder it; there was no other engineer in sight.

Neither Lawrence nor any other engineer left with me schedules as to where they would be; I know inspection engineer Smith [573] and remember when he called, mainly by his condition, as he was very inebriated or intoxicated; he made a social call with some friends he was travelling with on the boat; he gave me quite a bit of trouble because the boat stayed in Ketchikan sixteen hours; he was there most of the time; in his condition he wasn't a very efficient engineer and he went through the whole house at high speed; told me my troubles and naturally wanted his service slip signed, which

(Testimony of Louis Lemieux.)

I did for him more out of form than anything else; after he inspected the equipment he asked me where he could find a bootlegger; that is all I saw of him until he came back to see the preview at three o'clock in the morning; he looked over the whole theatre, took a look at the horn towers to see if they were set satisfactorily for sound, came to operating room, got acquainted with the operator and asked if everything was operating all right, which it was; that was about the extent of his inspection; he was on his way that time to install the Lathrop circuit in Western Alaska; he didn't stop any longer than the boat was in Ketchikan; that is the only time I saw him.

I wrote this undated letter on behalf of defendant to plaintiff from Ketchikan about September, 1929.

Whereupon undated letter written by Witness Louis Lemieux in behalf of defendant to plaintiff was received in evidence, marked

DEFENDANT'S EXHIBIT V,

and reads as follows:

L. C. LEMIEUX
Resident Manager
Ketchikan

Electrical Research Products, Inc.,
New York.

We received today by mail, statements for weekly service from your company at the rate of \$29.75 a week for each of our theatres at Juneau and Ketchikan, Alaska.

(Testimony of Louis Lemieux.)

Mr. Gross is on his way East with Mrs. Gross, and in looking over our contracts can find no confirmation as to our being charged for weekly service as we do not use sound every day in the week.

Our contract shows plainly that we should not be charged for service, and I may add that the price of talking pictures [574] for this territory is so high that extra expenses are too much for us to pay. We have first class men here and whenever anything goes wrong we can find the trouble ourselves.

The only agreement we had is that if anything goes wrong with our equipment we would pay the expenses of a service man coming up to this territory from Seattle, Wash.

Pictures at present are too high to buy and therefore we are laying low on sound.

Hoping that you realize the way we are situated and if there is any dispute as to further service charges, kindly write the manager of the Coliseum Theatre, at Juneau, Alaska and he will forward same to Mr. Gross.

Respectfully yours,

(Signed) L. C. LEMIEUX

Mngr. Coliseum Theatre.

Ketchikan, Alaska.

Thereupon Witness Louis Lemieux further testified: Most of the service engineers prior to Witness

(Testimony of Louis Lemieux.)

Lawrence went through on the boat; I couldn't say how many stopped off at Ketchikan because there were probably four or five during that period between Lawrence and Taylor, but most of them were there just during the time the boat was in port from half an hour to two hours; the lesser troubles that occurred were such as tubes burning out, going dead, one thing another; we changed them when necessary, fixing them ourselves.

Cross Examination.

Thereupon Witness Louis Lemieux further testified: The four or five service engineers who called between Taylor and Lawrence all served their reports upon me and I receipted for them; I don't even remember the names of very many of them; I remember Smith quite well as he was pretty drunk when he came down; I saw him at Ketchikan; at that time he was going to the westward to install talking equipment in Captain Lathrop's theatres; I couldn't say what day it was but along in the winter of 1929 or fall, between November, 1929, and January, 1930; that is as close as I can come; I never saw him again; I was then working in Ketchikan; I am now working as care taker of defendant's apartment houses and am not employed in his theatre at all and have had nothing to do with the theatres since about August, 1932, or 1931, I don't remember, a year and a half ago anyway; I came from Petersburg to Juneau; when the equipment

(Testimony of Louis Lemieux.)

was being installed I and Witness Tuckett actually did the work, but Taylor directed it by which I mean that we packed [575] in the bases which weighed about 250 pounds, which involved nothing technical, and set up the machines; I made up out of wood an adapter for the lamp house; we set the machine up, first putting the base down and leveling it up, then started putting on the lower parts, fastened the legs to the bolts, bolted the turntable down; fastened the amplifier; that was all done with Taylor's directions; they had to be assembled together first and Taylor told us where the parts were; the disc was put on after it was set up; I don't remember the next part; I don't remember now whether the disc was the next part; I can't say what was the next part after that; I couldn't remember now how to set up the equipment after six or seven years; I didn't have anything to do with setting up the equipment in Ketchikan; Tuckett and I each bought three volumes of Richardson's Handbook, which is a sort of operator's bible; I gave mine to Bontrager when I left Ketchikan in 1930 or 1931 and haven't had one since.

In that conversation when I was present Witness Wilcox said Taylor could just as well go home, back to the States as he thought he had the equipment running in such shape that he could leave it; Gross had no service and it wasn't necessary for him to stay here any longer; that wasn't the total conversation. Wilcox spoke to Gross afterwards

(Testimony of Louis Lemieux.)

when I was present and explained to Gross how in case of necessity we had good transportation up here and airplane at that time and planes could be chartered to come up here; in case he had trouble he could telegraph to Seattle for an engineer to come up and take care of it; that is the conversation as to the equipment; Wilcox was interested in the boys, myself and operator at the time; he wanted to know how we were getting along, how we liked the equipment; the equipment was doing pretty well at that time; present at that conversation were Taylor and my brother, Ned Lemieux, Gross and myself, and I believe we were breaking in a new operator at the time and he was in the operating room.

When a service engineer came to wherever I happened to be stationed, either Ketchikan or Juneau, I and my operator both went right around with him to see what he was doing; that was true of [576] practically all the service engineers who came here; I couldn't say that I looked over and receipted all those service reports; there might have been one or two I left to the operator; I don't recall whether Ralph Bontrager signed one for me or not, but he could do it under my authority; Taylor gave me a pretty good course of instructions as to operating the machines, spending a week or so in Juneau after he returned from Ketchikan, and Knowlton gave us very good advice, but from that time on the engineers' advice was only in case of certain

(Testimony of Louis Lemieux.)

trouble, we talked it over with them, explained it to them, and then they would advise us on the parts we asked for information; Lawrence also gave me instruction; he and Foulon were both good engineers.

I make a distinction between the daily inspections I made when I went around to oil the machines and the weekly inspections that I and my operator made; it required about three or four hours to make the weekly inspection which we called our Saturday's job and which was about the same kind of inspection or service that the engineers gave the equipment when they came around; when I fixed this motor control box, Ralph Bontrager did the work under my supervision; I don't take the credit away from Bontrager, he was a good electrician and had a good deal of radio experience; I would say that he, so far as following the electric circuit, was more efficient than I, but he did the work under my supervision and I considered myself competent to check, test or ascertain what was the matter at that time, or to check any of the Western Electric Talkie Equipment; there are some troubles I don't believe I would be able to find in two or three months; anything in the circuits back of the transformer would be easier for Bontrager to figure out than for me, having had experience with those kinds of electrical circuits and hook-ups.

Bontrager and myself tested the motor control box trouble to see if there were any shorts or breaks

(Testimony of Louis Lemieux.)

in the circuits, that is any loose connections, couldn't find any; I couldn't tell now how to go about to test them out and I know of no particular way that they could be tested in a hurry, but our best system is elimination [577] and experiments; we were lucky the job didn't last longer; we found a thread of solder about that long (indicating a very short length) that had jiggled down from vibration from some other part we overlooked when the connections were soldered during installation; I couldn't say when the trouble occurred; it might have been in December, 1929, I couldn't say; the motor didn't run at all; I know of a simple method by which variations in the speed of the motor can be corrected but anything like that I used to leave to my operator, Ralph Bontrager, who I believe, but am not sure, is now in Wrangell; he would tell me what it would take to fix it and we would figure it out between us to see if his system was any good; whether or not I could fix it myself depended upon what it was; we always worked together on trouble in the operating room; we had a pronounced hum in the horns but couldn't find any reason for it in the tubes or pre-amplifier or main amplifier; we went all over it trying to find the trouble; I don't know what tests we did apply; that was quite a long time ago; I haven't had any experience since that time on Western Electric equipment; it has been off my mind; it would be hard for me to say what would be the common ordinary test to apply to

(Testimony of Louis Lemieux.)

ascertain that, for the reason that we only had one trouble like that; we discovered the trouble was in the ground; it must have been approximate to some other disturbing element whereby the trouble would pass into the ground; the trouble was outside the machinery in the house; we ascertained it was in the ground by trying the ground in three or four different places and finally found one where the noise was absent; Bontrager assisted in that; two dumb-heads are better than one; it took both of us to do it; I really don't know what the absence of a ground would do not being technical enough; I know all electrical equipment usually has a ground.

Taylor was still here when we had the fader difficulty; he worked about two days on it himself; we ascertained the trouble which was quite serious, he left with us in the fader by another [578] experiment; in the construction of the fader in the back there, I believe, if I remember right, there is a bakelite place, insulating plate in the back; everything on the fader is built to that. There is a round disc about three inches, and outside of that a row of contact buttons, and on the control handle there is what you call fingers, one touching the plate, one the contact button as it moves around. There is a soldered connection on the three-inch round plate in back outside the fingers so it won't touch them in going by. There is quite a bit of pressure as you turn the control handle and when you get the handle in a certain position it would push the plate

(Testimony of Louis Lemieux.)

away from the soldered position thereby killing the sound altogether; the soldered connection looked all right, you could not tell it wasn't good; I had the point of a pencil in there trying to make the sound appear and disappear by my own means, instead of by the control handle; the lead on the pencil carried electricity and when it touched the soldered connection the sound came in because the lead made contact and let the sound in; that was my trouble, it wasn't very technical; an engineer would not have done it that way; we were pretty lucky in all these troubles; I imagine that a technical man would call the fader the sound rheostat but it was a fader to me; it was the thing that controls the volume of sound, the same as on a radio set when you make it louder or softer; it is too deep for me to state whether or not a variable resistor can be used in a series between the pick-ups in connection with that operation; Bontrager did not help me fix the fader; at that time we were pretty nervous about the equipment; it was something new to us; Schombel had an electric crew in installing and I went and got his advice about it; it took him as long to fix it as it took to get a wire hot, being a very simple matter when I finally located it.

I was in Ketchikan for, I imagine, nineteen months as manager, from August, 1929, to January 1931; during that time I wrote the letter, defendant's exhibit V, some time the latter part of September, at which time I was running sound pictures

(Testimony of Louis Lemieux.)

four nights a week and silent pictures the other three nights, which we kept up for another five or six months when we got lined up with other companies besides Warner Brothers for sound pictures, having at first contracts only with Warner Brothers; it is true that the expenses at that time were too big for me to pay \$29.75 because picture shows are always broke; I would say that that statement in that letter is actually true; because when I looked at the bill I was thunderstruck; I wouldn't have written the letter otherwise; I looked over a copy of defendant's contract, plaintiff's exhibit 3, previously when I was in Juneau, but I couldn't say now whether or not I read the contracts or got the dope through hearsay or where I got it; the big expense mentioned in that letter was film, which was [579] costing us about \$500.00 a picture but silents didn't cost that much; silents went down about a year later, about in September, 1930, we were paying \$500.00 for a sound picture at that time besides \$100.00 on copyrights on sound; we were taking in big receipts too, at that time; when our operators [580] learned to run sound we raised their wages; I believe the same month I went to Ketchikan Bontrager was raised from \$160.00 to \$175.00 I think I raised him first to \$175.00 and my salary when I took over the manager's job was raised to \$225.00 in August, 1929, it having previously been raised from \$150.00 to \$200.00; I don't remember just what other big expenses we

(Testimony of Louis Lemieux.)

had at that time or just what the operating expenses were; the janitor got \$175.00 or \$185.00 a month; Gross took care of the janitor's salary; the only funds I handled in Ketchikan was to make out my expense checks, which I drew on the Miners and Merchants Bank and then I would send them to Juneau with the explanation; of course the regular checks for wages, freight, light, and fuel were self-explanatory; in case I had extra expenses I would make out a check, explain to defendant in a letter what it was for, then after his signature was put on the checks in the book, that was in Juneau; then they were returned to me for distribution; I just drew all my checks and sent them here for signature and never had anything to do with entering them in the book or anything of that kind: I have not lately seen any of those letters of explanation of what those checks were for.

I used to make a weekly report and a monthly report to the Juneau office; all our correspondence was done in that manner unless something special came up in the meantime, having regular forms: I couldn't say whether or not all the Ketchikan weekly reports are in this bundle of papers, defendant's exhibit X; I didn't personally draw the janitor's check; I don't remember now what his salary was to the dollar; I know there was fluctuation in the salary all the time, in fact the only salary I personally knew of was my own.

When Knowlton was in Ketchikan he ran through a cycle film, which was a test reel made by plaintiff

(Testimony of Louis Lemieux.)

for the purpose of testing the response of the equipment to the different cycles of sound; I ran the film and Knowlton made the test; I would be able to run the film to make a test of sound; we had no film in stock for that purpose, and the special instruments Knowlton used in running the film, were furnished by plaintiff and tests couldn't be run without having those tools; I did know what those tools were but I [581] don't know whether I do now; I don't believe I could remember any of them; the voltage in Ketchikan was always fluctuating, never was normal; if high we didn't compensate for it in the motor control cabinet, the City Power put a variable rheostat on the main line, which we got from the Ketchikan Light Company; we didn't clean the screen every day, but once a month, every six weeks or whenever it was necessary; we didn't clean the film rheostat, the prongs, the vacuum tubes, or the contacts to the horn switch, or measure the photo electric cell battery voltage, or the battery of the photo electric cell amplifier every day; at the time I knew but I don't now know what the correct reading of the batteries of the photo electric cell amplifier should be; I really couldn't give any technical data in the way of testing tubes at this time, I have forgotten; I know at the time we ran the tube tests we had four tests on the different tubes to be sure they were functioning properly, but at this time I cannot tell what they were; checking the core between the pad rollers

(Testimony of Louis Lemieux.)

and roller pad assembly was not done daily but weekly; we tested this by putting a piece of film in the machine and rolling it to see if the proper tension was maintained in the pad, which was the way that plaintiff's equipment was checked; I don't remember the correct clearance; I don't believe I remember exactly what the setting was in the pad roller; we didn't check that every day or the 205-D tubes and amplifiers; I don't know now but did know the limit for those tubes, which information I got from the instruction book, and I would get quite a bit of information from Knowlton's inspections; I would say that focusing the exciter lamp alone would probably reduce machine noise a little, but machine noise through the exciter lamp is generally caused by an old lamp or broken filament; we refocused the lamps practically every day; they all don't get loose every day; I don't believe I ever had a case of a battery connection getting loose; it is a daily job to keep the machines wiped clean and see that there is no leakage, but the gear boxes would not be filled up every day, there was a plug inside of the case that you could test through; commonly nothing [582] gets loose in the fader; I never had anything get loose in the fader, but I had the trouble in the fader I previously testified to when Taylor was here, which was the only trouble we had in the fader aside from noises from dirt; we had to clean it practically every week.

(Testimony of Louis Lemieux.)

Redirect Examination.

Thereupon Witness Louis Lemieux further testified: Schombell was chief electrician at the Alaska Electric Light and Power Company where he was employed when I got him to fix the fader; at the time of the Wilcox conversation my brother, Ned Lemieux, was busy running the machines, in fact we were running them together; he took over the full operation of the machines while I talked with Wilcox; he was present at part of the conversation, I couldn't say how much; the other man was Mexie Cortez, but I couldn't swear whether he was in the booth at the time. He was then employed in the theatre and we were instructing him in the operation of the machines; I don't remember whether he was there that night, don't think he was, because after my brother came to work he was not in the booth very much; Knowlton had special equipment he carried with him to make certain tests but none of the other engineers had that equipment; none of the other engineers had any equipment that we were not supplied with right in the theatre; we having the same meters and supplies they had, Knowlton being the only exception;. [583]

LOCKIE McKINNON

Lockie McKinnon, defendant's witness, being first duly sworn, testified:

Direct Examination.

I live in Juneau; lived in Alaska nearly fifty years; I have known where the Coliseum Theatre was ever since it was built; I attended it during 1929, 1930, 1931, 1932, and 1933; I remember hearing of when the equipment was taken out of that theatre, but I don't remember the date; I used to go there right along both before and after; maybe once, sometimes twice a week.

Whereupon the following proceedings took place:

Q. Did you have occasion to notice the character of the sound during that period?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial, no proper foundation laid for this line of questioning; that particular question I suppose could be answered "Yes" or "No".

Q. Did you notice the character of the sound, quality of the sound, before the equipment was taken out?

A. Yes.

Q. Was that good or bad?

Mr. ROBERTSON: Same objection.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. Well, it was good to what I was used to because it was the first talkie I ever heard. I thought it was good then.

(Testimony of Lockie McKinnon.)

Thereupon Witness McKinnon further testified: I went after the equipment was taken out, once a week perhaps, I don't know; I didn't go very often; I noticed the character of the sound after the equipment was taken out and the new put in.

Whereupon the following proceedings were had:

Q. What was it?

Mr. ROBERTSON: Same objection.

The COURT: Overruled.

Mr. ROBERTSON: Exception. [584]

A. Yes.

Q. Was it good or bad?

A. I didn't think the sound was as good, that is why.

Cross Examination.

Thereupon Witness McKinnon further testified: I couldn't say that I ever saw the same show after this equipment was taken out as I saw before; I don't recall that. [585]

NED LEMIEUX

Ned Lemieux, defendant's witness, being first duly sworn, testified:

Direct Examination.

I now live in Chilkoot Barracks, Alaska, having lived in Alaska ever since I was eighteen months old; I know defendant; I was employed in his Juneau Coliseum Theatre from May 17, 1929, to February

(Testimony of Ned Lemieux.)

26, 1930, when I was moved to Wrangell to take charge of his new theatre in Wrangell; I arrived in Juneau a week after the sound equipment was installed in defendant's Juneau Theatre, and was present for a short time while Taylor was here; I was in the booth when Wilcox, Taylor, Gross and myself were there; that is all that I remember; I couldn't hear their conversation; I was running the machines; we had both machines in operation, I was warming them up; there was so much noise I didn't hear any conversation; I don't remember any of the service men by name; they weren't around here long enough for me to get that familiar with them; I was operator of the Juneau Coliseum Theater during the entire time I was here, and I operated the machines every day during that time, approximately nine months; I was here when we had quite severe trouble on two different occasions and I was able to repair them at the time, although it took me some time to find the trouble, but a very short time to repair it; on the first occasion there was a short circuit in the pilot light of the disc circuit, about January 10, 1930, which was a job to find, but through the process of elimination I traced it down to this pilot light where two wires had come together and short circuited, which blew out a three ampere fuse, might have been a six ampere fuse, in the battery room, killing the entire equipment; we gave a show under those conditions, fortunately having film productions which we could run instead of disc productions; otherwise probably

(Testimony of Ned Lemieux.)

could have run on the other machine by inserting another fuse in the circuit and refrained from [586] throwing that switch on the disc side; we would have run the show but it would have been obnoxious to the customers however, and not satisfactory; we got it fixed, I repaired it, no service man being present or in sight, or that I could get to my knowledge.

The next trouble was approximately three weeks or a month later; the trouble I now have testified to was when Smith came up, whom I remember, Tuckett brought me a telegram, it was right after I repaired the pilot light trouble; the telegram was from Smith, said for me to meet him at the theatre at eight o'clock in the morning, so I went down to the theatre about six o'clock thinking he would come right up after the boat landed; he arrived at a quarter to nine and after having him identify himself, I let him in the booth, showed him where the trouble was; he didn't say anything but "Working all right now". I said "Yes, all right now, no trouble since". "That's fine." He turned around and walked out. When we got down to the foyer again he said, "I wish you would sign this report, I have to show that I have been here," so I signed the report and he said "I will fill it out on my way." That is the last I ever saw of him; he was on his way to install Lathrop's equipments in those theatres in the little towns to the westward; he told me he had the equipment on the boat and that

(Testimony of Ned Lemieux.)

they were going to install a service in Juneau and have spare parts and a man stationed here all the time and he was then on his way to Lathrop's and on his way South he was going to establish a distribution service point at Juneau, but he never did it; I guess he was in the house ten minutes not more; that was the last of Smith.

About three weeks or a month later there was a little service man here, whose name I don't remember; he shortened up the lead from the pre-amplifier to the photo electric cell; about a month later, in February, I think, he had shortened it up previously to when Smith came; he said it was picking up too much noise; it was unnecessarily long; he shortened it up but in splicing it together evidently didn't use a hot enough soldering iron and left an im- [587] proper connection in the solder and one night a noise came into the horn that was so bad you couldn't hear the talking at all; first I investigated the little connecting block that is in the cabinet that holds the photo electric cell, I tightened all the little thumb screws in it; I wiped the photo electric cell; finally I followed the lead down to where it hooked on to the connection in the pre-amplifier chamber, little connection I suppose to stop any vibration noises that occurred; I finally grabbed hold of that in my fingers, just grabbed it tight and the noise disappeared; so I figured I had traced down the trouble; I got a new piece of wire from the telephone company with

(Testimony of Ned Lemieux.)

the same core and same size and put it in there and re-soldered it in, and the trouble ended; no service man was here at that time and I don't know where any of them were; Smith was here and I believe that was the last one who came after that date; those 239 tubes gave us a lot of trouble; I believe they were supposed to give 100 hours and we used to have to change them every three or four days, they would get low; on another occasion the fuse controlling the circuit to the drive motor on the base of the equipment, blew out one night; there was a ten ampere fuse; I inserted a new fuse; it blew out again; I unfastened the drive and found it would turn freely by hand; I don't know what caused it to blow but corrected the trouble by inserting a larger fuse; before the show was over it was necessary for me to insert a fifteen ampere fuse.

Thereupon the following proceedings were had:

Q. Were minor, small adjustments necessary at any time?

A. We adjusted portions every night. I came to work at six o'clock every night, started warming the amplifier and making all the necessary adjustments, and tested the sound and horns before even a person came into the theatre.

Q. Tell the jury now just what you did every night, in the way of making inspection and minor adjustments?

(Testimony of Ned Lemieux.)

Thereupon witness Lemieux further testified: The first thing throw your service switch, then throw this switch herein into the plate and let it heat about 5 minutes; then throw it onto the filament, then you was in service after it warmed up; then I go [588] wash the machine down with clean rags and carbon tetrachloride, get it nicely cleaned, [589] take 20 minutes to wash down two machines; I come back and test the 239 tubes by pressing these buttons you get the filament on each one—you were allowed a slight variation five milliameters I think; then clean out the optical system, wash it down with carbon tetrachloride, dip pipe cleaners into carbon tetrachloride, then take another clean pipe cleaner and wipe them; wash this movie-tone aperture each night with carbon tetra-chloride; then throw my switch onto your film or disc side, film side is the way we did it; run my fingers up and down the aperture and test the sound and see you got sound in the horns; then test the exciter lamp. After got it all washed up and cleaned, you were ready to start the show. If you found a tube low, you changed it: every Saturday we made a weekly inspection, taking the housing off the fader, washed it down with carbon tetrachloride, going over the tubes with an eraser, cleaning the prongs, working them up and down in the sockets; we tested the tubes by taking one out and inserting another in the first socket, I don't remember just exactly how we did do it now, anyway the registration was to be at a

(Testimony of Ned Lemieux.)

certain point; we tested the 205-A tubes so as to keep them balanced as closely as possible; gave the machine a very thorough going over, working all set screws to see that they were tight, cleaning the machinery up extra good, and cleaning the fader; the fader had to be cleaned because if it was not you could hear the rasping noise in the horns when you turned the fader from one machine to the other

The weekly and daily inspections were of about equal importance, but the weekly inspections took longer to go over the entire equipment and clean up all those tubes.

Cross Examination.

Thereupon Witness Ned Lemieux further testified: I worked in defendant's Juneau Theatre from May 17, 1929, until about February 21, 1930, and then went to Wrangell, was in charge of his theatre and remained there two and a half months; then went to Sitka, built a new theatre there for defendant, taking charge of its construction; left Sitka August 17 and on September 1, 1930, [590] went to Haines in charge of defendant's theatre where I worked eight months, then went to work for the United States Government on July 1, 1931. I never worked for defendant in either his Juneau or Ketchikan Coliseum Theatres since about February 21, 1930; but I visited them on two occasions, putting up a new screen in the Juneau Theatre be-

(Testimony of Ned Lemieux.)

tween August 15 and September 1, 1930; I have never been in defendant's Ketchikan Theatre and never did anything in his Juneau Theatre after February, 1930, except putting up this screen that I mentioned.

Taylor had installed the equipment here and went to Ketchikan while he was there, I came to Juneau, receiving my first instruction on equipment from my brother Louis Lemieux; shortly afterwards Taylor came back here for a final inspection of the installation and I received further instruction from him but nothing further than in confirmation of what my brother told me; Taylor told us to make these daily inspections and we followed them explicitly; the Saturday inspections were always made regularly as our meals during the period from May 1, 1929, to February 1, 1930; we were always breaking in an operator here at Juneau; my brother, Louis Lemieux was manager of the Juneau Theatre for a month or six weeks after I arrived, then Tuckett was manager the rest of the time; I can't say that Smith was drunk at the time I saw him; he looked like he had a hang-over; that was the next day of the same trip of the boat that my brother Louis saw him in Ketchikan; he gave me a report which I signed and I have no copy of it and I have no idea whether defendant has a copy. I have not seen a copy since I arrived here to attend this trial; at that time I told Smith that the equipment was running O. K.; it was in pretty

(Testimony of Ned Lemieux.)

good condition right then, around about January 10, 1930; I would say between January 1 and 10, 1930; however, it wasn't running all right shortly before that, I just completed fixing it; that was the time Tuckett sent the wire to Briggs and got a wire from Briggs about it: [591] shortly after that there was some other trouble with the Juneau equipment, but I don't know anything of any other telegram being sent by Tuckett to Seattle; I don't remember hearing Tuckett testify about it; one of the troubles I testified to in the forepart of January, 1930, was the trouble on the disc side of the machine, the switch on the disc side blew out the fuses in the battery room, as naturally when a negative and positive wire in direct current come together so that you have a direct short circuit, it will blow the fuse; it took me one whole night and the next day to trace it down and I think at two o'clock in the afternoon of the next day I fixed it; that stopped the operation in the entire equipment of both machines; stops absolutely the main amplifier, putting the 41 amplifier out of commission; the lamp socket or whatever it was that was shorted or grounded was not on the same fuse as the photo electric amplifier but on a different one; so far as actually changing from a ten ampere fuse to a fifteen ampere fuse, there is no difference than changing from a lighter to a heavier fuse in a person's house; at that time I made an examination of the control box to find out whether a larger fuse was needed but found

(Testimony of Ned Lemieux.)

nothing wrong and I blamed it onto a surge of the line voltage; I changed again the next night to a ten ampere fuse and it worked all right; I don't know what "impedence" means; I know a regeneration circuit to a certain extent, it is a noisy circuit and will cause noise and I would say it is harmful to the operation of an amplifier; I don't know what a grade cylinder circuit is in one of these circuits; I don't profess to be a technical man at all, I am a practical electrician; I know that when the transformer is burned out there is no remedy for it except a new transformer; I am speaking of a 42 type amplifier; a noisy annoying hum in the reproduced sound indicates trouble, and the manner of tracing it down depends on the hum; if a loud hum I would first look at the ground circuit to see if I had the proper ground; I don't know just what else I [592] would investigate; I would have to be there with the equipment; it is merely a process of elimination that all practical electricians use to locate trouble; I don't know and couldn't say whether there is more than one possible cause of hum; in case of hum in both machines it is almost certain the trouble would be in the 42-A amplifier and you would go through that to seek it out; I don't know what I would do, I never had that trouble, I would try to locate it, if the hum wasn't bad enough to close down the show but sufficiently bad to need locating right away; when I left Juneau on February 21, 1930, to take my new position in defend-

(Testimony of Ned Lemieux.)

ant's Wrangell theatre the equipment in his Juneau Theatre at that time was running in pretty good condition; it was in fine shape; that is the last time I had anything to do with that equipment except when I came back and put in a new screen, as I testified. [593]

W. L. DALNER.

W. L. Dalner, defendant's witness, being first duly sworn testified:

Direct Examination.

I now live in Haines, Alaska, my business is electrician or theatre manager in which business I have engaged for six years, having been connected with the motion picture business for that period; before that I was an electrician, diesel engineer; I first became connected with the motion picture business with the Masterphone Sound Corporation in Seattle and continued with them for one and a half years; my duties at first were varied, but later those of installation engineer and service man; I know defendant and accepted employment with him in August, 1930, as theatre manager of his Sitka Theatre and as service man, being on call at all times, trouble arising at any house I was to be called and sent there immediately, including all of defendant's theatres. I never had occasion to go to Juneau or Ketchikan; I am still in defendant's employ; I was in Ketchikan when the equipment there was replev-

(Testimony of W. L. Dalner.)

ined in this action; I arrived in Ketchikan two or three weeks before then.

Whereupon the following proceedings took place:

Q. What, if any, information did you obtain from the Marshal as to the time he would take the equipment out?

Mr. ROBERTSON: Object, it is not the best evidence. The writ of replevin is the best evidence.

Mr. HELLENTHAL: The purpose is to show this man went to Ketchikan, and went to the Marshal and asked if he could let him know in advance when he would have to take the equipment out so he could hasten the situation, to get the other equipment in. The Marshal notified him before, and he immediately went to work changing the equipment. It has nothing to do with the Marshal's return or what the Marshal did, but merely explains what he did is all.

The COURT: He may answer.

Mr. ROBERTSON: Exception, Your Honor. [594]

Q. State what you did in the way of consulting the Marshal about the time the equipment was to be taken out?

A. We asked him to let us know in advance, if possible, when he was to take the equipment out; so one evening he dropped in to the show, I believe he was going to the show, and said he

(Testimony of W. L. Dalner.)

would be around for the equipment in the morning.

Whereupon Witness Dalner further testified: Prior to that time I had received new equipment to take the place of the replevined equipment and on advice of the marshal immediately after the show was out that night I disconnected the plaintiff's equipment which was in good condition, set it out on the foyer floor intact, and installed our new equipment; plaintiff's equipment was then in such condition that I could not reinstall it in time to run the show that night but if given time I could have done so; Witness Lawrence came in the following morning on the Alaska around ten o'clock; he came back a little later and started to dismantle their bases, getting them ready for shipment outside, I presume; after that was done he went and dismantled the amplifier rack, took it out and also the horns and speaker units backstage; he came in an hour or two after the marshal served the writ; after Lawrence dismantled the plaintiff's equipment I could not put it together again, but if I had had a blueprint I might have been able to do so, but I had no blueprint and I then installed the new equipment and started the show.

Cross Examination.

Thereupon Witness Dalner further testified: The new equipment for defendant's Ketchikan Theatre arrived, I should say, roughly two weeks prior to

(Testimony of W. L. Dalner.)

its being set up in operating condition. It was Wonderphone Equipment manufactured by the Universal High Power Telephone Company; I believe the Marshal was there ahead of Lawrence; I was installation engineer of the Masterphone, which was the same kind of equipment that defendant had in his other five theatres and very similar to the equipment that he installed [595] in the Ketchikan Theatre; I have been managing defendant's Haines Theatre since April, 1932; I was never called to either defendant's Juneau or Ketchikan Theatres in the capacity of service man.

Redirect Examination.

Whereupon Witness Dalner further testified: Defendant's five other theatres would be considered small.

Recross Examination.

Whereupon Witness Dalner further testified: Defendant's Haines Theatre is not the smallest in actual seats. [596]

J. F. MULLEN

J. F. Mullen, defendant's witness, being first duly sworn, testified:

Direct Examination.

I live in Juneau; my present position is United States Commissioner; I know and did know defendant and his Juneau Coliseum Theatre during

(Testimony of J. F. Mullen.)

1929, 1930, 1931, 1932, and 1933; I recall when the equipment was replevined from his theatre; I frequented it prior to that time probably a little better than twice a week and observed and noticed the character of the sound.

Whereupon the following proceedings were had:

Q. I mean, Mr. Mullen, did you observe the character of the sound in the theatre and equipment prior to the time the plaintiff's equipment was taken out?

Mr. ROBERTSON: Object, as it is incompetent, irrelevant, and immaterial, and no proper foundation laid.

The COURT: Overruled.

A. I did.

Mr. ROBERTSON: Exception.

Q. What was it, good or bad?

Mr. ROBERTSON: Same objection.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. It was bad.

Q. I mean before the equipment was taken out under the writ of replevin, was it good or bad then?

A. Comparatively speaking I thought it was good.

Mr. ROBERTSON: Same objection.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

Q. How was it bad?

A. It was bad—inferior to the former equipment. [597]

(Testimony of J. F. Mullen.)

Thereupon Witness Mullen further testified: I frequented the theatre after that equipment was taken out and the new equipment installed probably the same average number of times.

Cross Examination.

Thereupon Witness Mullen further testified: I never saw the same picture by the same actors or artists in the Coliseum Theatre before the equipment was removed and after it was removed.

WHEREUPON DEFENDANT RESTED
ITS CASE.

Whereupon the following proceedings were had:

Mr. ROBERTSON: At this time, if the Court please, we first move that the exhibits "H-1" to "H-7", inclusive, including the exhibits "I" and "K", the respective series of "I" and "K" be stricken from the records, in this suit, upon the ground that the books,—that exhibits "I" and "K" are made up from the books "H-1" to "H-7" rather—and that the books "H-1" to "H-7" do not appear to be all the records of the defendant pertaining to the operation of his two theatres and they have not been properly identified as such by the witness Tuckett.

We also move at this time, if the Court please, that the jury be instructed to entirely disregard those allegations of the first and third counter-claims in respect to damages for loss of good will and profit, because there is no proof in this case of the loss of any good will and that such profits, concerning which evidence has been adduced, are so uncertain and highly speculative that they could not possibly form a measure of recovery of damages in this suit.

And we also move at this time that the jury be instructed to entirely disregard those of the affirmative defenses, as well as the second and fourth counter-claims that plead an alleged duress, upon the ground that there has been no evidence offered in this case to support the contention that the exhibits "2" and "4" were entered into, or afterwards in anywise carried out by the defendant Gross under any duress exercised upon him by plaintiff or any of its agents.

Mr. HELLENTHAL: We have refrained from offering evidence on the good will, and when the proper time comes I will withdraw that from the complaint. I think counsel is right about that.

The COURT: I think he is too. The record is absolutely barren of any testimony supporting any damage on account of loss of good will. The motion in that respect will be allowed. The other specifications of the motion I do not think are well taken at this time.

Mr. ROBERTSON: Exception, Your Honor.

REBUTTAL

LAWRENCE KUBLEY,

plaintiff's witness, being first duly sworn, testified: I reside in and have lived in Ketchikan, Alaska since 1910; my occupation is merchant and I have been engaged in the moving picture business since 1913; I ran the Dream Theatre since 1913, as well as my confectionery store, the Dream Theatre now being called the Revilla Theatre; I have also been engaged as a merchant in business in Ketchikan since 1910 and at the present time have the Ketchikan Confectionery, cigars and beer. I have an interest in the Revilla Theatre in Ketchikan under the same arrangement that defendant has with Shearer in the profits there.

I was also engaged in the moving picture business in Juneau, namely the Capitol, its name before I took it over being the Palace; when I took it over I completely remodeled it from top to bottom, threw out all the seats, redecorated it, changed all the machines, and absolutely overhauled it; its opening date was on January 15, 1931; prior to taking over the Capitol Theatre I had made an investigation or study of the motion picture conditions in Juneau; I came here in November trying to get my film circuit lined up and found there was a chance to get in on the lease of the Palace Theatre and assumed management directly afterwards; I spent about a month or a month and a half remodeling it; up to that time the Palace Theatre was no competitor at all of defendant's Coliseum Theatre, having

(Testimony of Lawrence Kubley.)

hardly no business, the leading Juneau theatre at that time being defendant's Coliseum, but the Capitol became the leading theatre in Juneau after January 15, [599] 1931, which statement I base upon the way people turned out to the theatre, the crowds we had and the compliments on the sound and equipment; up to January 1, 1931, defendant was charging 75¢ for moving picture shows in Juneau, but he dropped his price to 50¢ on January 1, 1931; I remained in Juneau from November, 1930, until March, 1931, being right in Juneau all that period; I know defendant's Witness Tuckett, having known him ever since he has been in Alaska and I knew him prior to the time I took over the Capitol Theatre; I personally saw him here in Juneau in 1931 and personally know he was here at that time.

After I opened the Capitol Theatre and had renovated it I was told that it had the best sound in Alaska; I think the furnishings and equipments of the Capitol Theatre at that time were far superior all around to the furnishings and equipments of defendant's Juneau theatre; I was personally familiar with the equipments and furnishings in defendant's theatre; we made a special effort in regard to the acoustics in the Capitol Theatre, stripped the entire ceiling of the tin with which it was covered and took out the tin covers on the radiators, hung heavy velour drapes in the balcony and on the side walls and put matronite on the entire back

(Testimony of Lawrence Kubley.)

wall, in order to effect a good sound condition; I made a personal investigation to ascertain the patronage the Palace Theatre was enjoying prior to the time I took it over and converted it into the Capitol Theatre and it had a very small patronage; I personally operated the Dream Theatre in Ketchikan, now known as the Revilla Theatre, it being my own theatre when I was operating it; I have been in Juneau frequently since 1913 and after we took over the Capitol Theatre I was here every two months or so back and forth and before that once a year; prior to my taking over the Palace Theatre and converting it to the Capitol Theatre, [600] it was no competitor for defendant's Juneau Coliseum Theatre at all but after I renovated it it was a pretty serious competitor.

Defendant himself told me on one occasion that the Capitol Theatre was a very serious competitor of his Juneau Theatre; I believe that was in June, 1932, directly after I opened the Revilla Theatre in Ketchikan, the conversation taking place on the boat just before we arrived in Seattle; he let me know we hurt him pretty badly; he said I was the cause of his losing about \$52,000.00; he said I had caused him that loss by taking over the Palace Theatre, remodeling it and putting it in good shape; it was without doubt hurting his business and patronage; Western Electric or plaintiff's equipment was installed in the Capitol Theatre when I opened it January 15, 1931, which was substantially the

(Testimony of Lawrence Kubley.)

same kind of equipment then in defendant's Juneau and Ketchikan Theatres, except we had a little later type; our equipment contained such additional improvements as might have been made in the intervening period.

I was a competitor of defendant in the motion picture business in Ketchikan for a good many years and I became a competitor of his with sound in April, 1932, in the Revilla Theatre, which was the same theatre mentioned in this case as now being operated by Shearer; Western Electric or plaintiff's equipment was installed in the Revilla in February, 1931, the same model and type as in the Capitol, but we did not actually commence operation in the Revilla Theatre until April, 1932, because business didn't warrant it at that particular time; the depression was on so heavy we figured it would be over, but it continued to get worse; the depression was worse in 1931 and we didn't open. [601]

I am familiar with actual business conditions in respect to whether they were good or bad in Ketchikan in 1931, 1932, and 1933; they were very bad in 1931; Ketchikan certainly felt the depression; the principal business or industry upon which it depends as a source of revenue is fishing and the fishing industry in 1931 and 1932 was very bad, commencing to look quite a bit better in the spring of 1932 and the first substantial improvement was in the fall of 1932; during that time there were sev-

(Testimony of Lawrence Kubley.)

eral business failures in Ketchikan, Earl Major and Adams closed out, California Grocery, Knox Jewelers, my theatre was closed for a period after sound came in, of about one and a half years; at that time there were three theatres in Ketchikan, mine, defendant's and the Liberty; the latter was closed by the creditors; the Ingersoll Hotel, Ketchikan's leading hotel, was turned loose by Mr. Ferris; the Blue Fox Cafe, Ketchikan's very best cafe, went under; I attended the theatre in Ketchikan quite frequently, going over to the defendant's Coliseum Theatre quite regularly.

Before I started up the Revilla Theatre in Ketchikan in 1932 I completely remodeled it, redecorated, all new seats, new screen, new heat and ventilating systems, entirely renovated; it was the old Dream; after being renovated it became a competitor of defendant's Ketchikan Theatre and we enjoyed a good business; I know it had some bearing on the defendant's Ketchikan theatre which I ascertained by the crowds we had at our theatre and their comments on the house and the steady attendance; prior to opening the Revilla Theatre I investigated the effect the depression had upon defendant's Ketchikan theatre and I imagine it had effect upon the attendance there, which statement I base on account of business conditions, and money was absolutely impossible to get hold of; there was no relief work at all in the winter of 1931; we had 600 [602] on city relief rolls and they came around

(Testimony of Lawrence Kubley.)

to all the merchants and secured enough to take care of the relief rolls until the C. C. C. work came in the next winter; the depression hurt everybody; I visited defendant's Coliseum Theatre during that time quite frequently, once a week, and the falling off in attendance was quite noticeable.

The price was fifty cents when I commenced operating the Revilla Theatre in April, 1932, and defendant was charging fifty cents; he afterwards made a reduction but I don't know just when it was; he dropped to forty cents and paid the tax himself; we had to meet him; I would say that he reduced his price to forty cents about a month or six weeks after the theatre tax went into effect June 21, 1932; his fifty cent price for general admission was in effect when I opened the Revilla Theatre in 1932; his price at his Ketchikan theatre had dropped to fifty cents from seventy-five cents immediately after the first of the year, the same as in Juneau, or soon after that; the Revilla Theatre in Ketchikan enjoyed a very nice business after it started up; and the Capitol Theatre in Juneau did a very good business, by which I mean a gross business on an average of around \$5,000.00 a month; there was no other theatre in Juneau except defendant's Coliseum Theatre; I know, prior to the opening of the Capitol, the Palace Theatre was doing very little business. I had a contract relative to plaintiff's servicing my talkie equipment in my two theatres, and they serviced them; commencing

(Testimony of Lawrence Kubley.)

in Juneau around the first of 1931 when we installed sound; I believe I heard Cawthorne testify in this suit; "service" by those in the moving picture business, is meant to inspect and keep talkie equipment in running shape—inspection and service for the purpose of keeping it in first class running order; I did not understand it to mean that there would be no breakdown or stoppage at any time; a breakdown might come at any time; I understood in this respect that the engineer would look at it once a month and inspect and go over it thoroughly and give it the service it needed. [603]

Cross Examination.

Thereupon Witness Kubley further testified: I don't recall when the depression commenced in Ketchikan; we had quite a session and it was at its height and worst in 1931; I wouldn't say that it really commenced or that times had been dull some years before that; it was dull in the fall when the halibut fleet was out, that fleet belonging in Seattle; possibly the closed season of halibut started somewhere around 1924, 1925, or 1926; Ketchikan did not become quiet in a business way that far back; it slowed up some for a few months in the winter time when the halibut boats weren't there; I can't say whether or not the winter closing of halibut resulted in people quitting eating halibut and eating other fish, and I don't know that when the season was opened after the closed season the

(Testimony of Lawrence Kubley.)

market was flooded with halibut with no sale for fresh fish; I never heard of that; they always sold plenty of halibut; when the season opened the price went up and was very high; whenever the halibut season opens up the first ships are naturally high; after they unload the fish, they had a steady market; I am not in the fish game and have no idea as to how steady the market holds, it fluctuates up and down; but I do know that in the spring around Easter time it is still high so they must enjoy a fairly good price.

The depression of the Nation certainly was general along during 1930 and 1931; it was at its height then; I know it was not so noticeable in the fall of 1929 as it was later on when the different business houses were closed, along about 1931 when most of them felt it worst; some might have closed in 1930; I wouldn't say the particular date or time of year when the business houses were closing; plenty of them closed; I don't recall any closing in 1933 but I think one or two did in 1932; it was along about 1931 when the worst hit; I know the depression for one or two years made them lose their business; I didn't have my theatre in Ketchikan ready January 1, 1931, but sound was put in in February, 1931, and I delayed [604] opening it because of the depression, and opened it in 1932 at which time things began to look better; defendant has a nice theatre in Ketchikan, it is the largest theatre there.

(Testimony of Lawrence Kubley.)

Prior to my opening my theatre in Juneau, January 5, 1931, the Palace Theatre had been operated in that same theatre building and had had sound equipment in it, having been operated for a number of years, probably ten or fifteen years; I was familiar with defendant's Juneau Theatre to the extent that I was a patron there occasionally and he had a pretty nice theatre here, good sized house, holds five or six hundred people, and equipped as good as the equipment could be at the time; it was built several years ago, many years prior to my arrival here; the seats were regular theatre chairs, practically new when I came here and the walls were artistically decorated to a certain extent; I remodeled the Capitol, redecorated it, put in new seats, and fixed it up generally; defendant should have been doing a good business; after I opened I ran Metro Goldwyn, R. K O., Columbia, United Artists and Universal services, while Gross ran Warner Bros., First Nat'l., Fox, some Pathe, and Paramount; Metro Goldwyn were not the only first-class picture besides Metro-Goldwyn; there were then ten major companies, he had five and I had five; I did a good business after I got started and I think Gross' business dropped off; after we opened in Ketchikan I did a good business there and I imagine we hurt Gross' business some; I did not fail in the theatre business in Juneau and Ketchikan or close my house in Juneau; I am still operating, and I did not fail to meet my obligations;

(Testimony of Lawrence Kubley.)

I did not sign an agreement with Shearer in which I confessed I owed over \$30,000.00; defendant and I have always been competitors the last thirteen years but I wouldn't say I don't like him. [605]

Redirect Examination

Thereupon Witness Kubley further testified: Gross' Juneau Theatre at the time I opened the Capitol had a tin ceiling, which had a very bad effect on sound; I did not delay the opening of the Revilla Theatre on account of being delayed in the obtaining of picture service. [606]

ERIC PAULSON,

plaintiff's witness, being first duly sworn, testified: I live in Juneau; my occupation is theatre manager; I now manage the Uptown Theatre; I started in the moving picture business in 1907 and since then have been engaged in it approximately 19 years out of the elapsed 27 years; I was connected with the moving picture business in Seattle three or four years before sound came in; with the Liberty in Ketchikan as operator from 1919 to 1922, and as operator of the Dream Theatre of which Lawrence Kubley was owner, in Ketchikan from 1922 to 1929; I was manager of the Capitol Theatre in Juneau from January 15, 1931, until May 4, 1933; its name prior to that was the Palace; before opening the Capitol Theatre I personally investigated the theatre

(Testimony of Eric Paulson.)

business in Juneau, coming up here from Ketchikan in June, 1930, at which time the Coliseum and Palace Theatres were running in Juneau; I made my investigation by attending the shows and found that the Palace had a very small patronage at that time in comparison with the patronage at the Coliseum, the latter then being by far the better theatre, the Palace Theatre being in a rather run-down condition; I made a further investigation during the last days of November, 1930, over a period of five or ten days, by attending the Palace Theatre and found that very few people were attending it; Kubley and I renovated the Palace Theatre in December, 1930, converting it into the Capitol Theatre, tearing down the tin ceiling, changing the entrance to the balcony, placing the entrance on the inside of the foyer, rearranging the foyer and loges, painting the walls with Glosstex, putting in new [607] drapes, new carpets, new loge seats and new title curtain and also a new Western Electric equipment, with new heads in them; those renovations improved the sound and looks of the theatre, which opened as the Capitol on January 15, 1931, with the picture, "Let Us Be Gay".

Defendant's Coliseum Theatre in Juneau was superior to the Palace Theatre but I would say that the Capitol Theatre was the best as between it and defendant's Coliseum Theatre; the Capitol Theatre did a very good business after it opened up, having an approximate attendance of 650 people on its

(Testimony of Eric Paulson.)

opening night, which business continued for the two years I was there, having an average attendance of between 280 and 290 people a day with very good average gross receipts of between four and five thousand dollars per month for the period up to January 1, 1932, gross receipts running during the eleven and a half months that it ran in 1931 of something over \$49,000.00, close to \$50,000.00.

Prior to the time the Capitol opened defendant was charging seventy-five cents for general admissions to his Juneau Theatre, which he reduced on January 1, 1931, to fifty cents, which was the price charged by the Capitol Theatre upon its opening, commencing on January 15, 1931; defendant put that reduced price into effect first; I know Witness Tuckett, having known him practically since he came to Alaska about 1923 or 1924; he was in Juneau the first part of January, 1931, and I talked to him here about the price of admissions to the theatres: subsequently to the fifty cent price being put into effect, defendant reduced the general admission price to his new picture show in Juneau to forty cents due to the sales tax that became effective about June 21, 1932; I believe that he reduced it to forty cents right after the tax went into effect; we didn't make any price reduction in the Capitol Theatre for quite a little later on but increased our price to fifty-five cents [608] keeping that in effect until October or November, 1932, when we reduced it to forty cents because general busi-

(Testimony of Eric Paulson.)

ness was rather low here and people didn't like to pay the fifteen cents extra we charged, as for a period of some months we charged fifteen cents more than defendant's Juneau Coliseum Theatre.

The gross receipts of the Capitol Theatre during 1932 were close to \$49,000.00, not quite so large as in 1931; I don't include the tax in gross receipts, the attendance in the Capitol Theatre during 1932 was practically the same as during 1931. I made an investigation of the business that defendant's Coliseum Theatre was doing by going down there occasionally looking at the show and checking the people coming into the house; I think the operation of the Capitol Theatre had a bad effect on the attendance at defendant's Coliseum Theatre; in February, 1931, I went to Ketchikan to help plaintiff's engineer install sound equipment in the Revilla Theatre, during which time Witness Kubley remained in Juneau; I think I was in Ketchikan between two and three weeks.

The Ketchikan's Dream Theatre's name was changed in April, 1932, to Revilla, at which time it opened having been renovated and refurnished, the balcony having been practically torn out, rebuilt, new operating room, recarpeted, refitted, repaired, drapes hung on the walls and equipment installed, the latter having been installed in February, 1931; prior to the renovation of the Revilla Theatre, defendant's Ketchikan Coliseum Theatre was better than the Dream Theatre, there being no comparison;

(Testimony of Eric Paulson.)

after the Revilla Theatre was renovated and fixed up, in my estimation the Revilla Theatre was the best, but the Coliseum Theatre was the largest; there was also a third theatre in Ketchikan, the Liberty, but there was no comparison between it and either the Coliseum or the Revilla; after [609] the Revilla Theatre was renovated in April, 1932, it was the superior theatre in Ketchikan as to equipment, furnishings, and things of that kind; I am familiar with the Liberty Theatre in Ketchikan, having worked in it; I wouldn't say that it was very bad competition for defendant's Coliseum Theatre because it was a small house and its furnishings and equipment didn't compare with the Coliseum, nor was it hardly any competitor of the Revilla after the latter opened in April, 1932; I understood that some time during this period, prior to April, 1932, the First National Bank of Ketchikan took over all the bills, and whole works of the Liberty Theatre and turned them over to another manager.

The business done by the Capitol Theatre in Juneau from January 1, 1933, to May 1, 1933, was not so good, there being a falling off of perhaps fifty per cent, due to the weather, as we had lots of snow, winds, rain and cold, which I found affected the attendance at the theatres in Juneau; weather conditions did not affect the attendance in the Ketchikan Theatre so much as in Juneau; I have found that summer time is the poorest season of the year for attendance at Juneau, but in Ketchikan probably

(Testimony of Eric Paulson.)

the two or three months while the halibut boats are out were the poorest season; I was present when Witness Cawthorn was testifying and heard his testimony; plaintiff serviced the talkie equipment in the Capitol Theatre in connection with its operations; my understanding is that the word "service" among people engaged in the motion picture business relative to the servicing of talkie equipments, means checking, inspecting and repairing when needed, once a month or so, in order to keep the machines in good running order.

Whereupon the following proceedings were had:

Q. Please state what, if any, meaning is given to the term "Service" by the theatre industry and those engaged in it, in respect to meaning that talkie equipment must be kept in perfect condition at all times by those servicing it.

A. The way I understand is that "service" means to keep the set in good shape so that she will run.

Q. How do you mean, "so that she will run"?

A. Well, so that she is ready for operation.

[610]

Cross Examination

Thereupon Witness Paulson further testified: I am now operating in Juneau the Uptown Theatre, which is a fine theatre elegantly equipped and I believe the best equipped in Juneau, having operated it for four months during which time it has been open to the public. [611]

JAMES C. COOPER

James C. Cooper, plaintiff's witness, being first duly sworn, testified: I am a certified public accountant holding a certificate from the State of New York and have engaged in the profession of accountancy approximately twenty-two years in New York City, Los Angeles, Chicago, Kansas City, Seattle, and Juneau; I have just finished an audit of the books of the Territorial Treasurer and the Territorial Auditor; I have no connection whatever with plaintiff but was employed by it after this case started in order to check some of these exhibits, books and things which have been put in evidence or produced here by defendant; prior to that time I had no connection with plaintiff; I did not come to Juneau for the purpose of being a witness in this suit; I have made some analyses of defendant's exhibits Series I and K and have checked over those exhibits so far as it is possible with the records that were submitted to us; I have attempted to verify the additions in those exhibits and have found some discrepancies or mistakes; on exhibit K-3 under August, 1931, the column headed "Film Freight" shows a total of \$7.75, whereas that column total should be \$21.49, or a difference of \$13.74, an understatement in the costs of that amount; on exhibit K-1, May, 1929, "Film Rental" shows a total of \$973.96, whereas the correct total is \$1,373.96, or an under-statement of expense of \$400.00, which would increase the cost by that amount; in the same exhibit, August, 1929, the column headed "Wages"

(Testimony of James C. Cooper.)

is \$505.13, whereas the correct total is \$465.13, or a difference of \$40.00, which would decrease the cost by \$40.00; October, 1929, "Film Rental" is added \$2,718.20, while the correct total is \$2,713.08, of a difference of \$5.00; on exhibit K-2, October, 1930, "Film Rental" the total is \$1,984.01, whereas the correct total is \$3,134.01, or a difference of \$1,150.00, which would increase the cost by that amount; February, 1929, exhibit K-1 various totals [612] show \$2,056.36, whereas the correct total is \$2,056.40, or a difference of 4¢; April, 1929, cross footing is shown as \$2,225.52, whereas the correct amount is \$2,223.52, or a difference of \$2.00 over-stated; December, 1929, cross footing is \$3,537.45, whereas correct amount is \$3,737.80, or a difference of \$235.35; January, 1930, cross footing is \$3,696.66, whereas correct amount is \$3,453.66 or a difference of \$243.00 which would be a decrease; November, 1930, cross footing is \$3,002.30, whereas correct amount is \$3,008.30, or a difference of \$6.00 increase; on exhibit I, June, 1929, column "Repairs" the total is \$371.67, whereas the correct total is \$372.67 or a difference of \$1.00 under-stated expenses; June, 1931, exhibit I "Wages" total is \$290.00, whereas the correct total is \$390.00 or an understatement in expenses of \$100.00; I have also found eight other small errors of one or two dollars each; the items of \$400.00 and \$1,150.00 that I mentioned were understatements in the cost.

Whereupon the following proceedings were had:

[613]

(Testimony of James C. Cooper.)

Mr. ROBERTSON: If the Court please, we offer in evidence all the income tax returns of the defendant Gross which are here. (Being plaintiff's exhibits 43 and 44 for identification.)

Mr. HELLENTHAL: Object to them as irrelevant, incompetent and immaterial. They have been properly submitted to counsel for the purpose of interrogating a witness on such questions as he wished. He availed himself of that purpose. The only witness who knew anything about them was then on the stand. Counsel knew he was going to leave. He has since left the territory and cannot be recalled. For the further reason that counsel objected to the income tax returns when they were offered by us when the witness was here to explain them. They were ruled out on counsel's objection. While one was admitted before the ruling was made they were withdrawn by us on the understanding that the court had ruled against them.

The COURT: As I understand this thing, the general objection of the plaintiff to the admission of these in the first place was that they concerned the matter of profits, which wasn't involved.

Mr. ROBERTSON: Yes, I contended it was not evidence on the true measure of damages.

The COURT: When we had the reverse of the issue the defendant objected to the admission on the ground that they didn't represent a true statement of the account—in other words that the income tax statements which are here being offered were

(Testimony of James C. Cooper.)

not the income tax statements that were afterwards settled and accepted by the Government as such. Then we took a lot of time having the witness state what adjustments, settlements, etc., were made as a basis on the income tax returns, so that I don't think that they would be admissible at this time. I don't think this is the time, under the state of the testimony and at this stage of the trial, that they would be admissible. We would be opening up new avenues of investigation here which could continue on and on with nothing to be gained.

Mr. ROBERTSON: The witness Tuckett testified when I asked on cross examination where the work sheets were, and he claimed the work sheets were his personal property relative to the income tax returns and he had taken them to Portland and hadn't brought them back; furthermore they put in evidence their statements. These schedules are based, in part, upon these very income tax returns. I can't see why we are not entitled to take the figures from them if they can. We are meeting them. That was their case in chief. We are trying to rebut some of their evidence in chief.

The COURT: I understand the only thing that was taken from these income tax returns was the matter of the capital investment. Is that right?

Mr. HELLENTHAL: We didn't get the capital investment from the income tax returns. We got that from the appraisal made by the income tax man and Tuckett.

(Testimony of James C. Cooper.)

The COURT: Wasn't that included in the income tax returns as finally settled with the Government. [614]

Mr. HELLENTHAL: I don't know, except that all the evidence we offered was that Mr. Tuckett and the income tax man made an actual cash appraisal of the property and that was used by Mr. Tuckett in his calculations to determine the capital investment, but that has nothing to do with income tax. Probably they used it, but he didn't so testify.

The COURT: Any other part of the income tax returns used as a basis of calculation in these other statements?

Mr. ROBERTSON: One of the first questions I asked the witness Stabler was whether or not copies of the income tax were not used in preparing these analyses, exhibits "I" and "K" and he testified they were.

The COURT: What part of them?

Mr. ROBERTSON: I didn't ask him that, but I asked him whether or not he did not use the copies of these income tax return papers in preparing those exhibits. I submit it will show in the Reporter's record on that.

Mr. HELLENTHAL: I don't recall it.

The COURT: That isn't my recollection. If the record so shows you have the privilege to refer to it.

(Testimony of James C. Cooper.)

(Recess while Reporter looked up testimony.)

(Continuing):

Mr. ROBERTSON: I would like to ask the reporter to read the evidence, where I asked the witness Stabler in that respect, Your Honor.

The COURT: Very well.

(The Reporter here read the testimony of Harold Stabler—from page 729 of reporter's transcript—as follows):

“Q. You recognize those exhibits by number, don't you, exhibit “I” and “K”?”

A. Yes.

Q. What if any books, records or documents did you use in preparing them, other than those exhibits H-1 to 7?

A. There is nothing else.

Q. Didn't you use copies of Mr. Gross' income tax returns?

A. They were the basis for some figures.

Q. You did use them too, didn't you?

A. Yes, for some of the figures.

Q. From those exhibits ‘I’ and ‘K’ you excluded numerous items when you were preparing them, numerous items show in exhibits H-1 to 7?

A. Yes sir, we excluded certain items from those books.

Q. Who told you to exclude them?

A. Mr. Tuckett.

Q. Anybody else tell you?

A. No sir.

(Testimony of James C. Cooper.)

Q. Mr. Gross tell you?

A. No sir.

Q. Mr. Hellenthal?

A. No sir.

Q. Or Mr. Faulkner?

A. No sir. [615]

Q. Just Mr. Tuckett?

A. Yes sir.

Q. Now then you had no personal knowledge, as I understand it, whether or not they should be excluded, is that correct?

A. No sir.

Q. What do you mean by 'no sir'?

A. Sir?

Q. Do you mean you did have personal knowledge or didn't have personal knowledge—I ask you again.

A. I had no personal knowledge of the books at all."

Mr. ROBERTSON: I submit, if the court please, that substantiates he did use the income tax figures for that purpose and that so far as anything about Mr. Tuckett going away, we are prepared to show these analyses aren't made in a matter of a few hours or a few minutes, that the witness has gone into them very very carefully and taken a lot of time to get them and we worked night and day going through them and it was not any duty of ours to retain the witness Tuckett here.

(Testimony of James C. Cooper.)

The COURT: Are you prepared to show what part of the income tax returns—that is what we are talking about now—the defendant's income tax returns——

Mr. ROBERTSON: We are prepared to show what part we used.

The COURT: ——were used in the preparation of the compilations already in evidence.

Mr. ROBERTSON: No, we don't know what parts they used. It wasn't up to us to bring that out and show them. We didn't ask them what part they used. We are prepared to show what part we used. They certainly used them in trying to calculate the rent, and so on.

The COURT: In calculating the rent?

Mr. ROBERTSON: Yes, that depreciation which they claimed was the same, as I understood it.

Mr. HELLENTHAL: No rent calculation in these papers.

Mr. ROBERTSON: They took six per cent of the capital investment as depreciation and stated that that was the same as rent.

The COURT: I understood the capital investment they testified was made up of the appraisal made by the income tax man and Tuckett jointly and doesn't have anything to do with the income tax returns of the defendant here and was developed from the statement that was afterwards made up as a basis from the income tax statement that was subsequently made up and adjusted and settled,

(Testimony of James C. Cooper.)

or rather accepted by the Government as a basis for their income tax for those years, but I didn't understand it has any reference at all to the income tax return that was made by the defendant.

Mr. ROBERTSON: Certainly it does, if the court please. It is an allowance on the income tax return. If you have any capital investment you take off depreciation and that in turn naturally diminishes your income tax that much. It is an [616] essential part of the income tax return if you have any capital investment. You take depreciation from year to year and if you take too much the income tax people are very prompt in calling attention to it.

The COURT: That is what I am talking about. It was not figures incorporated in the income tax return but figures made up subsequently to that which are in evidence, made up by the internal revenue agent and the defendant, or his representative, jointly.

Mr. ROBERTSON: That is a matter to include in your return, Your Honor.

The COURT: It undoubtedly was included in the return finally used by the Government, but it isn't included in the original return which we are talking about now.

Mr. ROBERTSON: On the contrary, Your Honor, some of these returns certainly have depreciation or something of that kind stated right in them. I refer to plaintiff's exhibit "44" for identification, right on the first page. (Handing to court.)

(Testimony of James C. Cooper.)

The COURT: Well, this income tax return covers all of the income of the defendant from all sources?

Mr. ROBERTSON: Certainly.

The COURT: I don't see any part of it in here segregated in any intelligible way. I think it would be more misleading than it would be helpful to the jury. The offer will be refused.

Mr. ROBERTSON: Very well. At this time we offer to have marked for identification—that is, to the offer to receive the income tax returns in evidence.

The COURT: Denied.

Mr. ROBERTSON: Exception. That includes plaintiff's exhibit "43" for identification, plaintiff's "44" for identification; and we ask at this time counsel produce the ones for the other years if they have them here with them. [617]

PLAINTIFF'S EXHIBIT 43

for identification is as follows: printed "Form 1040—Treasury Department—Internal Revenue Service" and is headed: "Individual Income Tax Return—For net incomes from salaries or wages of more than \$5,000 and incomes from business, profession, rents, or sale of property for calendar year 1929, W. D. Gross, Juneau, Alaska; Occupation: Motion Picture.

"See Statement Attached Hereto"

(Testimony of James C. Cooper.)

INCOME

	At Juneau	At Ketchikan
RECEIPTS		
Total Theatre Receipts for year	\$52,478.55	\$58,222.74
Total Rent from Apts. & Stores	6,852.85	630.00
	<hr/>	<hr/>
Total Gross Income	\$59,331.40	\$58,582.74
Total Rent from Seattle, Property	\$ 8500.00	
Grand total of all income		\$126,414.14
	(forwarded)	
		[618]
DEDUCTIONS		
EXPENSE:		
Wages, paid	\$12,382.56	\$ 8,152.00
Films, cost	11,912.27	33,981.76
Freight, paid	1,052.62	482.40
Lights, Elec. Etc.	3,716.02	1,425.19
Fuel & Fuel Oil	1,100.27	376.68
Advertising Newspapers Etc.	1,053.85	1,113.69
Repairs & Replacements	1,742.83	5,096.10
Premiums on Fire Ins. & Insurance	1,759.81	712.50
Taxes, Municipal, Terr. & Federal	7,729.30	742.05
Interest on Borrowed Money	3,215.80	
Traveling Expenses	2,071.93	25.00
Gen'l Expense, all others	3,723.89	25.00
Loss, Bad Accounts	980.56	
Charity	104.00	15.00
	<hr/>	<hr/>
Total Expense	\$52,545.71	\$52,120.37
Net Operating Profit at Juneau	6,785.69	
Net Operating Profit at Ketchikan		6,462.37
Net Income from Seattle, Property	\$ 8,500.00	
Total Net Operating Profit at Juneau, Ketchikan and Seattle		\$21,748.06

(Testimony of James C. Cooper.)

DEPRECIATION AT JUNEAU

	Acquired	Cost	Depreciation Charged Off		
			Previous Years		This Year
Gross Apts.	1929	\$15,000.00		5%	\$ 750.00
Wooden Bldg.	1921	40,000.00	\$12,000.00	5%	\$ 2,000.00
Furn. & Fix.	1926	30,000.00	9,000.00	10%	3,000.00
Machinery	1921	5,000.00	3,000.00	10%	500.00
Totals		\$90,000.00	\$24,000.00		\$ 6,250.00
At Seattle					
Building & Lot	1928	\$125,000.00	—	2½%	\$3,125.00
At Ketchikan					
Wooden Bldg.	1922	\$60,000.00	\$15,000.00	5%	\$ 3,000.00
Furn. & Fix.	1922	30,000.00	15,000.00	10%	3,000.00
Machinery	1922	5,000.00	2,500.00	10%	500.00
Total		\$95,000.00	\$32,500.00		\$ 6,500.00

RECAPITULATION:

Net profit at Juneau	\$ 6,785.69
Net profit at Ketchikan	6,462.37
Net rents Seattle, property	8,500.00
Total	\$21,748.06
Depreciation	
At Juneau	\$ 6,250.00
At Ketchikan	6,500.00
At Seattle	3,125.00
Total	\$15,875.00
Net profit over and above expenses and repairs and depreciations:	\$ 5,873.06

There are no other receipts, income, expenses, repairs and depreciation other than shown hereinabove.

(Testimony of James C. Cooper.)

"EARNED INCOME CREDIT	
"21. Earned Income (not over \$30,000)	\$ 5,873.06
"22. Less Personal Exemption and Credit for Dependents	3,900.00
	<hr/>
"23. Balance (Item 21 minus 22)	\$ 1,973.06
"27. Normal Tax (1½% of Item 24)	\$ 9.87"

Attached to the foregoing copy of Defendant's Income Tax Return and produced by him with it and a part of said exhibit are the following papers, viz:

Letter from Internal Revenue Service to Gross, dated Feb. 3, 1932, re: Procedure for taking appeal;

Printed form of letter from David Burnet, Commissioner of Internal Revenue, to Gross, dated Feb. 3, 1932, advising that the determination of defendant's tax liability for 1929 disclosed a deficiency of \$855.61 "as shown in the attached statement";

Typewritten statement headed "In re: Mr. W. D. Gross, Juneau, Alaska. Tax Liability. Year 1929. Tax Liability \$855.48. Tax assessed \$9.87. Deficiency \$855.61."

Printed Form 870, Treasury Department, (in duplicate) headed: "In re Mr. W. D. Gross, Juneau, Alaska. Waiver of Restrictions on Assessment and Collection of Deficiency in Tax," which is unsigned.

(Testimony of James C. Cooper.)

Printed Notice re Appeals should be addressed to
United States Board of Tax Appeals.

Printed Notice, Form 882, Treasury Department,
re payment.

Copy of unsigned letter dated September 3, 1932,
from Defendant to Collector of Internal Revenue,
Tacoma, Wash., reading:

September 3, 1932

Collector of Internal Revenue,
Tacoma, Wash.

Dear Sir:

Mr. Fear, your agent was in my office and ask
for payment of tax due in 1929.

We admit this tax of 1929 and for which we are
sorry that payment has been delayed because of
poor business and investments in the small towns of
S E Alaska.

We owe considerable money on conditional sales
contracts and the people that hold these contracts
are threaten to replevin the material if the con-
tracts were not taken care of. This forced us to take
care of this indebtedness so that we could keep our
doors open.

We also had contract obligation for films that
was running from 40% to 50% of our proceeds,
which we could not get out of at the time being, but
at present we have succeeded in reducing this film
rental this year. [620]

So therefore we are giving Mr. Fear a check for
\$100.00 for this month and we will try to pay this

(Testimony of James C. Cooper.)

amount each month on this past due taxes. I will also try to enlarge these payments as soon as I am able to pay off what indebtedness is now outstanding and the conditional sales contract payments have been taken care of for which they are now forcing me to keep up.

Hoping that this meets with your approval and thanking you for your past co-operation I remain,

Very truly yours,

WDG/c

Printed Notice, reading: "Notice. This is a copy of the report of the examiner of your income tax return. It is an important document and should be carefully preserved", to which is attached a printed form of letter, Form 850, dated Seattle, Wash., December 19, 1931, addressed to defendant, headed: "In re Income Tax. Date of report: Dec. 17, 1931. Recommendation: Year 1930 Additional Tax \$178.44. Total \$178.44", signed by "Geo. C. Earley, Internal Revenue Agent in Charge", to which letter are attached five typewritten sheets containing detailed statements of adjustments in defendant's income tax return, followed by a printed form, reading: "Name W. D. Gross. Statement of Total Tax Liability. Year 1929: Tax previously assessed \$9.87. Adjustments proposed in accompanying report, Deficiency \$855.61. Correct Tax Liability \$865.48", followed by a letter dated Dec. 26, 1931, from defendant reading:

(Testimony of James C. Cooper.)

December 26, 1931.

Mr. Geo. C. Earley
Internal Revenue Agent in Charge
Seattle, Wash.

Dear Sir:

I received your income tax report written December 19, 1931, a complaint formally made out by your special agent that was in Alaska, Mr. John H. Clauson. According to Mr. Clauson's statements, however, some of the items that were in the books are not correct.

After receiving your information, I immediately started to investigate regarding your complaint.

I found that our new bookkeeper in making out the income tax reports for the years of 1929 and 1930 have not been attend to proper expenditures on our ledgers, so therefore, we ask for an extension of this claim as I am getting a capable auditor to investigate our books and revise our taxes of 1929 and 1930.

Please send me a new tax sheet for 1929 and 1930 and will be more than much oblige to you.

Thanking you for your information, also please find signed statement.

Yours sincerely

W. D. GROSS

WDG.P

[621]

followed by a letter dated January 4, 1932, to Gross from "Geo. C. Earley, Internal Revenue Agent in

(Testimony of James C. Cooper.)

Charge," acknowledging receipt of defendant's letter of December 26, 1931; followed by a mimeographed form headed "Instructions as to the Preparation of Protests against findings of Revenue Agent's Reports."

PLAINTIFF'S EXHIBIT 44

for Identification is as follows: printed "Form 1040 Treasury Department—Internal Revenue Service" and Headed: "Individual Income Tax return for Net incomes From Salaries or Wages of More than \$5,000.00 and Incomes for Business, Profession, Rents, or Sale of Property for Calendar Year 1930 W. D. Gross, Gold Belt Avenue, Juneau, Alaska. Occupation: Theatre owner and operator."

"Item and Instruction No.		
" 2. Income from Business or Profession		\$9,768.56
"12 Total income in Lines 1 to 11		<u>\$9,768.56</u>
"20. Net Income (Item 12 minus item 19)		\$9,768.56
"Earned Income Credit		
"21. Earned Income (not over \$30,000.00)	\$5,000.00	
"22. Less personal exemption and credit for dependents	\$3,900.00	
"23. Balance (item 21 minus 22)	<u>\$1,100.00</u>	
"24. Amount taxable at 1½%	<u>\$1,100.00</u>	
"27. Normal Tax (1½% of Item 24)	<u>\$1,650.00</u>	

(Testimony of James C. Cooper.)

“31. Tax on Earned Net Income (total of items 27 to 30)	\$1,650.00
“32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45 and 46)	\$ 4.12
Computation of Tax	
“33. Net Income (item 20 above)	\$9,768.56
“36. Credit for Dependents	\$ 400.00
“37. Personal exemption	3500.00
“38. Total of Items 34 to 37	\$3,900.00
“39. Balance (Item 33 minus 38)	\$5,868.56
“40. Amount taxable at 1½% (not over \$4000.00)	\$4,000.00
“41. Balance (Item 39 minus 40)	\$1,868.56
“44. Normal tax (1½% of Item 40)	\$ 60.00
“45. Normal tax (3% of Item 42)	\$ 56.06
“48. Tax on Net Income (total of items 44 to 47)	\$ 115.06
“51. Less Credit of 25% of Tax on earned income (Item 32)	\$ 4.12
“52. Total of Tax (Item 50 minus 51)	\$ 111.94
“55. Balance of Tax (Item 52 minus Items 53 and 54)	\$ 111.94”

(Testimony of James C. Cooper.)

To the Printed Form 1040 is pasted the following typewritten statement, viz.:

INCOME

	At Ketchikan	At Wrangell	At Petersburg	At Douglas	At Juneau
RECEIPTS					
Total Theatre					
Receipts for year	\$52775.20	\$14790.56	\$15897.35	\$ 3338.05	\$53798.14
Total rents from					
Apt. & Stores	360.00				9390.00
Other incomes					
Slides & Etc.	800.00				
Grand total of					
All income	\$53935.20	\$14790.56	\$15897.35	\$ 3338.05	\$63188.14

At Haines	At Sitka	Alaska Film Exchange	At Seattle
\$4752.75	\$6464.26	\$60,554.50	\$8500.00
	90.00		
\$4752.75	\$6554.26	\$60,554.50	\$8500.00
Grand Total of All Income			\$170,956.31

(Testimony of James C. Cooper.)

	At Ketchikan	At Wrangell	At Petersburg	At Douglas	At Juneau
DEDUCTIONS					
Wages	\$ 7,515.50	\$ 2,732.50	\$ 5196.57	\$ 1272.40	\$13607.55
Alaska Film Exchange	35500.00	5500.00	6238.55	1373.65	12102.30
Films Cost					
Freight	203.77	74.34	300.25	80.60	1031.52
Light, Elec. Etc.	1085.05	427.03	531.43	82.30	2711.75
Fuel, Fuel Oil	456.71	177.01	221.72	58.00	1867.97
Advertising					
Newspaper Etc.	1236.40	150.40	542.35	84.05	1410.11
Repairs & Replacements	750.00		241.48	151.15	9410.50
Premiums on Fire Ins. & Ins.	437.50				1357.00
Taxes, Municipal Terr. & Federal	416.50	360.00	70.00	50.00	1501.12
Interest on Borrowed Money	375.65				3708.43
Traveling Exp.					1625.05
Gen'l Expense	200.00	218.36	322.42	35.75	1969.72
Rents Paid on Bldgs. & Equip.	4118.12		1650.00	245.00	2595.73
Loss, Bad Accounts					
Charity			42.00		127.00
Net Operating Profit at	\$ 1640.00	\$ 5150.92	\$ 450.48	\$ 94.75	\$ 8162.39
				Loss	

(Testimony of James C. Cooper.)

	At Haines	At Sitka	Alaska Film Exchange	At Seattle
Wages	\$ 1742.45	\$ 1500.00	\$ 25.00	
Alaska Film Ex.	2450.00	2800.00		
Film Cost			43094.18	
Freight	54.43	102.00	122.81	
Light, Elec. Etc.	45.00	191.71		
Fuel, Fuel Oil		131.02		
Advertising			14.60	
Newspaper Etc.				
Repairs & Replacements				
Premiums on Fire Ins. & Ins.			213.00	
Taxes, Municipal Terr. & Federal			3650.54	
Interest on Borrowed Moneys			100.00	\$ 2575.50
Traveling Exp.			182.00	
Gen'l Expense	50.84			
Rents Paid on Bldg. & Equip.			1883.91	
Loss, Bad Accts.				
Charity			123.00	
Net Operating				
Profit at	\$ 410.03	\$ 1829.53	\$ 11145.46	\$ 5924.50
Total Net Operating				
Profit in All Places				\$34,618.66

(Testimony of James C. Cooper.)

DEDUCTIONS OF DEPRECIATION

	Acquired	Cost	Depreciation Charged		This Year
			of Previous Years		
Depreciation at Juneau.					
Gross Apt.	1929	\$ 15000.00	\$ 750.00	5%	\$ 750.00
Wooden Bldg.	1921	40000.00	14000.00	5%	2000.00
Furniture & Fixtures	1926	30000.00	12000.00	10%	3000.00
Machinery	1921	5000.00	3500.00	10%	500.00
Totals		\$ 90000.00	\$30250.00		\$ 6250.00
At Ketchikan					
Wooden Bldg.	1924	\$ 60000.00	\$18000.00	5%	\$ 3000.00
Furniture & Fixtures	1924	30000.00	18000.00	10%	3000.00
Machinery	1924	5000.00	3000.00	10%	500.00
Totals		\$ 95000.00	\$39000.00		\$ 6500.00
At Seattle					
Bldg. & Lot	1928	\$125000.00	\$ 3125.00	5%	\$ 6250.00
Totals		\$125000.00	\$ 3125.00		\$ 6250.00
At Douglas					
Machinery	1930	\$ 5000.00	—	10%	\$ 500.00
					[624]
At Petersburg					
Machinery	1930	\$ 5000.00	—	10%	\$ 500.00
At Wrangel					
Wooden Bldg.	1930	\$ 20000.00	—	5%	\$ 1000.00
Furniture & Fix. Mach.	1930	9000.00	—	10%	900.00
Totals		\$ 2900.00			\$ 1900.00
At Haines					
Wooden Bldg.	1930	\$ 5000.00	—	5%	\$ 250.00
Furniture, Fix. & Mach.	1930	7000.00	—	10%	700.00
Totals		\$ 12000.00			\$ 950.00

(Testimony of James C. Cooper.)

At Sitka

Wooden Bldg. & Iron	1930	\$ 18000.00	—	5%	\$ 900.00
Furniture, Fix. & Equip.	1930	11000.00	—	10%	1100.00
Totals		<u>\$ 29000.00</u>			<u>\$ 2000.00</u>

RECAPITULATION:

Net Profit at Ketchikan	\$ 1640.00
Net Profit at Wrangel	5150.92
Net Profit at Petersburg	450.48
Net Loss at Douglas	94.75
Net Profit at Juneau	8162.39
Net Profit at Haines	410.03
Net Profit at Sitka	1829.53
Net Profit at Alaska Film Exchange	11145.46
Net Profit at Seattle	5924.50
Total	<u>\$34618.56</u>

DEPRECIATION

At Juneau	\$ 6250.00	
At Ketchikan	6500.00	
At Seattle	6250.00	
At Douglas	500.00	
At Petersburg	500.00	
At Wrangel	1900.00	
At Haines	950.00	
At Sitka	2000.00	
	<u>\$24850.00</u>	<u>\$24850.00</u>

Net Profit over and above expenses &
Repairs, Depreciation Etc. \$ 9768.56

There are no other receipts, income, expenses, repairs and depreciation other than shown hereinabove.

[625]

(Testimony of James C. Cooper.)

Fastened to the foregoing copy of Defendant's Income Tax Return, and produced by him with it and a part of said exhibit were the following papers, viz.:

"Notice: This is a copy of the Report of the Examiner of your Income Tax Return. It is an important document and should be carefully preserved," and a letter upon the stationery of the Treasury Department, Internal Revenue Service, dated 528 Republic Building, Seattle, Washington, July 8, 1932, addressed to W. D. Gross, Juneau, Alaska, headed "In re: Income tax. Date of Report: June 21, 1932. Years Examined: 1930," and stating in substance that "enclosed is a copy of the report covering examination recently made by a representative of this office concerning your income tax liability which is furnished for your information and files," and that no remittance should be made until notice of assessment, and requesting acknowledgment, and signed by "Geo. C. Earley, Internal Revenue Agent in Charge," to which letter are attached 36 sheets of typewritten matter, giving a detailed statement of the Internal Revenue Bureau's adjustment of the defendant's Income Tax Return, and concluding with a printed form reading: "W. D. Gross, Statement of Total Tax Liability. Year 1930. Tax Previously assessed \$111.94. Adjustments proposed in accompanying report: Deficiency, \$2,056.09. Correct Tax Liability \$2,168.03."

(Testimony of James C. Cooper.)

And to the refusal in evidence of its said exhibits Nos. 43 and 44 for identification, plaintiff duly excepted. [626]

Thereupon Witness Cooper further testified: I made a thorough examination of the various figures disclosed by defendant's exhibits Series H, Series I, and Series K; I didn't keep track of the time I devoted to each individual item, but I have been working for the last seven days and nights, making analyses as well as checking over the schedules that were submitted to us; I found in that examination that the receipts, as shown on defendant's exhibits Series I and Series K, were substantially the same as shown in defendant's Series H; but in my examination I found a large discrepancy between the items of expense, totalized in defendant's exhibits Series I and Series K, as compared with the items of expense as shown in those portions of defendant's exhibit Series H, that Witness Stabler stated might be termed a journal; I found an apparent under-statement of expenses for the year 1929 for the Juneau Theatre on defendant's exhibit K-1 as compared with defendant's exhibit H, of \$23,000.00 and for the Juneau Theatre for the year, 1930, shown on defendant's exhibit K as compared with those shown on defendant's exhibit H-2 and H-3 for a corresponding period of time, an apparent under-statement of expenses of \$34,371.20, and for the Juneau Theatre for the year 1931, shown on defendant's exhibit K-3, as com-

(Testimony of James C. Cooper.)

pared with [627] the corresponding time shown on defendant's exhibit H-3, an apparent under-statement of \$10,886.21, and for Juneau for the year of 1932, there is an apparent over-statement of expenses on defendant's exhibit K-4, as compared with defendant's exhibit H-3 of \$1,552.18; for the Ketchikan Theatre for 1929 there is shown on defendant's exhibit I as compared with exhibit H-6, an apparent under-statement of expenses of \$15,681.58, and for Ketchikan for 1930, an apparent under-statement of expenses shown on defendant's exhibit I-1 as compared with exhibit H-6, of \$14,428.29; and for Ketchikan for 1931, an apparent under-statement of expenses shown on exhibit I-2 as compared with exhibit H-6, of \$5,970.39; and for Ketchikan for 1932, an apparent under-statement of expenses shown on exhibit I-3 as compared with exhibit H-6, of \$1,810.91; I have had prepared under my supervision charts graphically showing the receipts, expenses, profits and losses of defendant's Juneau and Ketchikan Theatres, as shown on his exhibits Series I and Series K for the period from January 1, 1929, to May 1, 1931; the source of the data shown on these charts was defendant's exhibits Series I and Series K, and are true graphic representations of the figures shown on those exhibits; the red line or top line indicates receipts or income; the blue line indicates the amount of expenses; the difference between them represents profits or if there is no profit, loss; the years are

(Testimony of James C. Cooper.)

indicated at the bottom of the charts, the months by a vertical line, each vertical line representing a month; the months are written in at the bottom; the amounts of money are shown on the left-hand side; the profit is the difference between the red and blue lines and in two instances, February, 1931, and April, 1931, for Juneau the blue line crosses the red line indicating losses, that the expenses were larger than the income; there is one chart for Juneau and one for Ketchikan.

Whereupon said charts were received in evidence, marked plaintiff's exhibits 49-A and 49-B, respectively.

Cross Examination

Thereupon Witness Cooper further testified: These graphs, plaintiff's exhibits 49-A and 49-B are graphs of defendant's exhibits [628] covering the whole series of defendant's exhibits I and K; I said that the receipts in defendant's exhibits Series I and K are substantially as shown in defendant's exhibit Series H; I found a difference in the expenses reported in the defendant's exhibit Series I and K as compared to those reported in Series H; in calculating those expenses I took into consideration the totals as shown by the monthly tabulations in defendant's exhibits Series H, leaving out none but taking the figures as they were reported by the tabulations at the end of each month; I charged the defendant's apartments and other outside concerns with part of the expense; I credited

(Testimony of James C. Cooper.)

the theatre expense with a sum equal to the income of the apartments, less depreciation or to make it plainer, I deducted from the total expenses, as shown by those monthly tabulations a sum equal to the income from the apartments less depreciation; I assumed that the Gross Apartments paid their own way; I don't know whether some of those apartments were built during those years or whether the cost of building them went into some of those items; I know nothing about that or about the cost of any other things that might have come in there; I have merely taken the figures as they appeared in the tabulations in defendant's exhibits Series H; I know nothing about the items except as they themselves were headed. If a lot of those items were expenses incurred in connection with other enterprises and they had nothing to do with the theatre, then my figures would be incorrect to that extent; I am not informed on the subject as to what items belonged to the theatre's expenses and know nothing about it but merely took the distributions as they are headed in defendant's exhibit Series H as representing the items that they are labelled to represent; for instance a heading is labelled "Wages", or "Light", "Oil", "Film", "Insurance", "Gross Expense", "General Expense", "Traveling", "Advertising", "Repairs", "Freight", "Charity", "Taxes",—I have merely taken those figures as being what they are called to be in those tabulations; I had no way of determining whether or not they were in theatre expense; [629]

(Testimony of James C. Cooper.)

I testified to some mistakes in addition that I found in defendant's exhibits Series I and K, which were proved by adding machine; some of those mistakes were over-statements, some under-statements, but they do not balance, the under-statements exceed the over-statements; I followed the same procedure in checking these exhibits in respect to both the Juneau and Ketchikan Theatres; all I knew about the items is as they are marked in the tabulation or distribution in exhibit Series H; I had no supporting documents offered to support any of the items contained in defendant's exhibits in respect to either theatre; they could have been supported either by an invoice of supporting papers, or by the person who made the payments provided that he was truthful; the net difference in those mistakes in addition, in Juneau is an under-statement of \$1,280.13, and in Ketchikan of \$102.11.

Whereupon the following proceedings took place:

“Q. If you had the man who made the payments and told you about these, you would know, if he were truthful.

A. If he were truthful, certainly.”

Redirect Examination

Whereupon Witness Cooper further testified: In checking for those mistakes in addition I went over defendant's exhibits Series I and K rather hurriedly and there may be other mistakes of that kind but I could't say as to that; I used the word “understatement” meaning that the expense was shown less than it should have been. [630]

COLISEUM THEATRE ATTORNEY



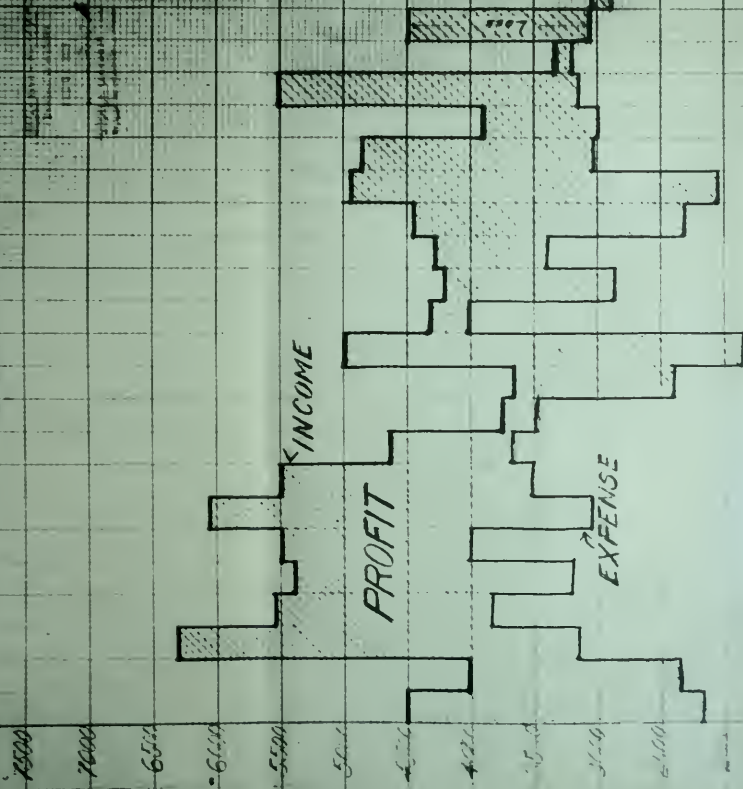
1929

1930

1931

1929 Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec 1930 Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec 1931 Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

COLISEUM THEATRE JUNEAU



1931

1930

1929

Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr

(Testimony of James C. Cooper.)

Mr. ROBERTSON: I now offer in evidence the exhibit marked "53" for identification, being a copy of the income tax papers produced by the defendant, for 1932.

Mr. HELLENTHAL: Object to this offer for the reason it is irrelevant, incompetent and immaterial—the further reason that it is not a record and can be used for no other purpose in the case¹ except for the purpose of impeachment; that the offer was submitted to counsel for that purpose, so that he might cross-examine Mr. Tuckett, who made the income tax report, while he was on the stand and was then here, and used for that purpose and Mr. Tuckett admitted on questions asked of him concerning it and afterwards explained the situation, so that there was nothing to impeach him on, and for the further reason that the Witness Tuckett has since left the Territory and since explanation cannot be made now counsel being advised at that time Mr. Tuckett was about to leave, and further reason counsel for the defendant offered the income tax returns in evidence while the Witness Tuckett was here and on the stand so that he might explain them, whereupon counsel for the plaintiff objected to them and the objection was then by the court sustained, so he is now estopped from claiming anything under these income tax returns whatever; the further reason they are in-

(Testimony of James C. Cooper.)

competent, irrelevant and immaterial; and it is not proper rebuttal.

The COURT: Objection sustained.

Mr. ROBERTSON: Exception.

Be it further remembered, that when the copy of defendant's income tax reports, attached to and embodied in the offer marked for identification as plaintiff's exhibit No. 43, and the copy of defendant's income tax report embodied and attached to the offer marked for identification as plaintiff's exhibit No. 44, and the copy of defendant's income tax report attached to and embodied in the offer marked for identification as plaintiff's exhibit No. 53, were offered in evidence by the defendant while the witness Tuckett was on the stand, it was understood by Court and Counsel on both sides that the witness Tuckett was about to leave the Territory for Portland, Oregon.

And be it further remembered, that when the plaintiff offered in evidence what is marked as plaintiff's exhibits Nos. 43, 44, and 53, it was known to Court and Counsel on both sides that the witness Tuckett had departed from the Territory of Alaska.

[633]

PLAINTIFF'S EXHIBIT 53

for identification is as follows: printed form of the Treasury Department, Internal Revenue Service, and is headed: "Individual Income Tax Return—For Net Incomes from salaries or Wages of More Than \$5,000.00 and Incomes from Business, Pro-

(Testimony of James C. Cooper.)

fession, Rents, or Sale of Property—For Calendar Year 1932—W. D. Gross & Wife, Juneau, Alaska—Occupation, Business, or Profession Theatre Business.”

“Item and
Instruction No.

“ 2. Income from Business or Profession	\$42,364.94
“18. Other Deductions not Reported Above	36,987.91
“19. Total Deductions in Items 13 to 18 (Depreciation)	22,440.68
“21. Less: Net loss for 1931	17,063.65”

Upon the face of the printed form is written in typewriting “(Note Attach Statement)”, Attached to the printed form and a part of said exhibit are the following typewritten statements, including the hereinafter quoted printed form of letter from “Geo. C. Earley, Internal Revenue Agent in Charge” to “W. D. Gross and Wife”, namely:

“This office is recommending to the Commissioner of Internal Revenue that your income tax returns for the year or years indicated be accepted as correct.

“I am sure you will appreciate that this action is subject to approval in Washington, and also that should subsequent information be received which would materially change the

(Testimony of James C. Cooper.)

amount reported, the Bureau is obliged under existing laws to redetermine your tax liability.”

which letter is dated Seattle, Washington, July 26, 1933, and is headed: “In re Income Tax—Years Covered: 1932”.

INCOME TAX REPORT FOR THE YEAR 1932

Summary of Business Done by W. D. Gross Including Theatre Receipts, Profits, Expenses, etc. and Depreciation for the Year 1932—

[634]

B-B-B

Total profit before deductions	\$42,364.94
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A-A-A

Film rentals, repairs, replacements, freight, advertising paid by Alaska Film Exchange	36,987.91
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Net profit before deducting depreciation	\$ 5,377.03
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C-C-C

Depreciation for year 1932	\$22,440.68
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Net loss 1932	\$17,063.65
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Total profit (loss) from all theatres, rents, etc. before deducting film rental, depreciation and etc.

(Testimony of James C. Cooper.)

	Profit	Loss
A-A Douglas	\$ 1757.94	
A-B Haines Coliseum		\$ 205.21
Haines Light Plant	434.20	
A-C Juneau Coliseum	5864.28	
Rentals	12063.50	
A-D Ketchikan Coliseum	8160.74	
A-E Petersburg Coliseum	2994.94	
Rentals	1038.91	
A-F Sitka Coliseum	4572.38	
A-G Wrangel Coliseum	4626.29	
A-H Seattle, Rentals	1056.97	
	<hr/>	<hr/>
Totals	\$ 42570.15	\$ 205.21
Net Total before Deductions	\$ 42364.94	

A-A-A

1932—

Alaska Film Exchange
Juneau, Alaska

Total Cost of Films

Paid for by Alaska Film Exchange \$28132.69

Total Cost of Film

Paid for by Coliseum Theatre
Ketchikan, Alaska 4783.33

Total Cost of Film

Paid for by Coliseum Theatre
Juneau, Alaska 2265.54

Repairs, Replacements, Freight

Advertising Paid for by Alaska Film Exchange 1806.35

Total Film Cost Plus Repairs and Etc.

\$36987.91

[635]

(Testimony of James C. Cooper.)

C-C-C

DEPRECIATION 1932

From all Sources

	Reserve Claimed 12/31/31	Depreciation Claimed 12/31/32	Reserve 12/31/32
A-C-1 Juneau, Alaska	3719.84	1484.92	5204.76
A-C-2	2837.69	1174.22	4011.91
A-C-3	7800.00	650.00	8450.00
A-C-4	3200.00	400.00	3600.00
A-C-5	13800.00	1150.00	14950.00
	6800.00	850.00	7650.00
A-C-6	14700.00	2100.00	16800.00
A-C-7	3900.00	1300.00	5200.00
A-C-8	2291.68	—	2291.68
A-C-9	200.00	300.00	500.00
A-C-10	50.00	200.00	250.00
A-D-1 Ketchikan, Alaska	21453.08	1726.54	23179.62
A-D-2	10060.29	1117.78	11178.07
A-D-3	12721.13	7.98	12729.11
A-D-4	5000.00	—	5000.00
A-D-5	2291.68	—	2291.68
A-D-6	200.00	300.00	500.00

A-C

COLISEUM THEATRE

Juneau, Alaska

1932

Receipts \$ 27379.46

Expenses (without films)

Salary, Wages	\$ 5490.82
Advertising (Newspaper & Etc.)	1878.05
Fuel, Oil	2509.01
Lights (Elec.)	2090.14
Freight	766.55
Interest	2965.50
Gen'l Expense	1378.70

(Testimony of James C. Cooper.)

Repairs	2815.21
Insurance	379.95
Taxes (City)	794.00
Travel	447.25

Total expense without Deducting film rental	\$ 21515.18	\$ 21515.18
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Total profit before Film deductions		\$ 5864.28
		[636]

1932 Juneau Rents Collected**	\$ 12063.50
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Total Profit from Rental	\$ 12063.50
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A-D

COLISEUM THEATRE

Ketchikan, Alaska

1932 Receipts	\$ 14920.49
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Expenses (without films)

Wages, Salary	\$ 3222.00
Freight	253.22
Oil, Fuel	516.70
Light (Elec.)	946.92
Gen'l Expense	306.46
Advertising	1198.29
Interest	229.60
Insurance	86.55

Total Expense without Deducting Film Rentals	\$ 6759.75	\$ 6759.75
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Total Profits before Film Deductions	\$ 8160.74
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(Testimony of James C. Cooper.)

A-C

Juneau, Alaska

Depreciation 1932

	Value	Acquired	Rate	Reserve Claimed 12/31/31	Reserve Claimed 12/31/32	Reserve 12/31/32
A-C-1						
Gross Apt.	\$29698.35	1929	5%	\$ 3719.84	\$ 1484.92	\$ 5204.76
Land	\$2000.00					
A-C-2						
Furniture	\$ 5870.93	1929	20%	\$ 2837.69	\$ 1174.22	\$ 4011.91
A-C-3						
Grand Building	\$13000.00	1920	5%	\$ 7800.00	\$ 650.00	\$ 8450.00
Land	\$5000.00					
A-C-4						
Forest Bldg.	\$ 8000.00	1924	5%	\$ 3200.00	\$ 400.00	\$ 3600.00
Land	\$6000.00					
A-C-5						
Coliseum	\$23000.00	1921	5%	\$13800.00	\$ 1150.00	\$14950.00
Land	\$5000.00					
	40000.00	1924	5%	\$ 6800.00	\$ 850.00	\$ 7650.00
Addition Reductions	\$17000.00					
						[637]
A-C-6						
Furniture, Fixtures	\$21000.00	1925	10%	\$14700.00	\$ 2100.00	\$16800.00
A-C-7						
Organ	\$13000.00	1929	10%	\$ 3900.00	\$ 1300.00	\$ 5200.00
A-C-8						
Sound						
Equipment	\$11000.00	1929	10%	\$ 2291.68	—	\$ 2291.68
Carried as assets until Court decides				Notest.	12/31/31—A-C-8.	
A-C-9						
Sound						
Equipment	\$ 3000.00	1931	10%	\$ 200.00	\$ 300.00	\$ 500.00

(Testimony of James C. Cooper.)

A-C-10

Valentine

Property	\$ 4000.00	1931	5%	\$ 50.00	\$ 200.00	\$ 250.00
Land	\$4000.00					

A-D-

Ketchikan, Alaska

Depreciation 1932

	Value	Acquired	Rate	Reserve Claimed 12/31/31	Depre. Claimed 12/31/32	Reserve 12/31/32
A-D-1						
Coliseum	\$34530.79	1923	5%	\$21453.08	\$ 1726.54	\$23179.62
Land	\$8000.00					

A-D-2

Kimbal Organ	\$11178.07	1923	10%	\$10060.29	\$ 1117.78	\$11178.07
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A-D-3

Furniture &

Fixtures	\$12729.01	1923	10%	\$12721.13	\$ 7.98	\$12729.01
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A-D-4

Machinery	\$ 5000.00	1922	10%	\$ 5000.00	—	\$ 5000.00
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A-D-5

Sound Equip-

ment W E	\$11000.00	1929	10%	\$ 2291.68	—	\$ 2291.68
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Note carried as assets until Court decides statement 12/31/31 A-D-5

A-D-6

Sound

Equipment	\$ 3000.00	1931	10%	\$ 200.00	\$ 300.00	\$ 500.00
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[638]

ADA W. SHARPLES

Ada W. Sharples, plaintiff's witness, being first duly sworn, testified:

Direct Examination

I am a stenographer and have done reporting of depositions, hearings, and things of that kind and now work for Attorney H. L. Faulkner, having been engaged in stenographic work for about twenty years; on March 16, 1932, in the Clerk's office of this Court, I reported the defendant's testimony in his deposition that was taken by Attorney Robertson on behalf of plaintiff in this suit before Deputy Clerk Leivers, at which time I took down defendant's testimony as he gave it, in shorthand; defendant's attorneys Si Hellenthal and H. L. Faulkner were present at that time and Attorney Robertson was present, representing plaintiff; after taking defendant's testimony I transcribed my notes and reduced it to typewriting, making a true transcript of my notes to the best of my knowledge and ability; I took down defendant's deposition in shorthand correctly so far as I know; I made a certificate on March 31, 1933, after I transcribed his evidence.

To the question propounded defendant in his deposition, "I now ask you to state, Mr. Gross, when he made that threat to you" he answered: "He made that threat when I received letters to settle the service charges, and after I decided to pay the service charges, he said before witnesses, that

(Testimony of Ada W. Sharples.)

he would see if I paid the service charges, he would have a man stationed at Juneau and one at Ketchikan. On the strength of that I paid the service charges." I believe they are a true transcription of my shorthand notes that I took at that hearing.

[639]

To the question propounded defendant in that deposition, "Is that the only conversation you ever had with Mr. Gage that he made any threats?" he answered: "That is the only conversation, when he sent for me to sign this paper and pay the money, otherwise they would take the machines out or attach the machines." I believe they are a true transcription of my shorthand notes as taken at that hearing.

To the next question propounded to defendant in that deposition, "That is the only conversation?" he answered: "Yes, I paid him on the strength of that." I believe they are a true transcript of my shorthand notes taken on that occasion.

To the question propounded to defendant Gross in that deposition, "Now, Mr. Gross, prior to that, that would be some time about, say four or five months after you got your sound reproducing equipment installed in your Juneau and Ketchikan Theatres, prior to that four or five months you never had any idea or knowledge that there were going to be any charges for inspection or inspection charges for making minor adjustments?" he answered: "That is correct." I believe they are true

(Testimony of Ada W. Sharples.)

and correct transcriptions of my shorthand notes taken on that occasion.

The next question propounded to defendant in that deposition, "Are you absolutely confident?" to which he answered: "I am sure," I believe also are true transcriptions of my shorthand notes taken at that time.

Cross Examination

Thereupon Witness Sharples further testified: That deposition was taken in 1932 in the Offices of the Clerk of this Court; defendant is somewhat of a hard man to understand, sometimes it was difficult for me to understand his answers; it is possible that there is a word wrong in this deposition; I couldn't [640] possibly remember now what happened right after he gave the answer to the first question to which plaintiff's attorney referred in my foregoing testimony, but in the deposition I transcribed it shows that immediately thereafter plaintiff's attorney said, "Wait, Mr. Gross, I move to strike out all that part of his answer as not responsive except the first part where the witness said he made it by letters." It is possible defendant said in that answer, "Upon the strength of the threats I paid the service charges" instead of "On the strength of that." The notes I took at that time have been destroyed; the certificate I made to the deposition was only a year ago last March; defendant never signed nor read the deposition so far as I know.

(Testimony of Ada W. Sharples.)

Redirect Examination.

Thereupon Witness Sharples further testified: I delivered a copy of the deposition to defendant's attorney, Si Hellenthal, at the same time I delivered a copy to plaintiff's attorney Robertson; I transcribed my notes on the same day I took the deposition; to the best of my recollection they are correct as I heard the testimony and reported it at that time. [641]

M. E. MONAGLE

M. E. Monagle, plaintiff's witness, being first duly sworn, testified:

Direct Examination

I am an attorney-at-law associated in the law business in Juneau with plaintiff's attorney, R. E. Robertson; I recognize this document defendant's exhibit A which was served by me upon Witness Charles Tuckett on March 10, 1931, when I took along as a witness to the service, R. E. Lawrence, who stood by while I read the document to Tuckett and then handed it to him; I first asked for defendant in order to serve it upon him but he wasn't there; I think Tuckett said that defendant was out of town or out of the theatre; we stood around talking; he said the equipment was all right and he didn't see any reason why defendant didn't pay, that defendant had told him he was going to make

(Testimony of M. E. Monagle.)

out a check a number of times, that he, Tuckett, hated to have me running over there all the time but he would get hold of defendant and get the money and pay it; I recall the time of day on which this replevin suit was brought; Witness Lawrence and I accompanied Deputy Marshals Martin and Newcomb when they went down to the theatre to serve the writ of replevin; Attorney Robertson did not go there at that time but came over between 4:15 and 4:30 o'clock, having been sent for by United States Marshal White; I was there part of the time while Attorney Robertson was there; the first time that I was there I left to get Marshal White; I arrived there about half-past two and stayed until about four; Attorney Robertson was not there during any of that time; when we got there Tuckett was the only one there and he was writing a letter; the marshal informed him he had come to disconnect the equipment and Tuckett said he would like to have [642] time to talk to defendant and went and got defendant; we stood in the office all the time; when defendant came he refused to give them the keys to the booth where the equipment was; it was locked up; there was quite a bit of howling around there and the deputy seemed to be afraid he might be exceeding his authority and asked me about the writ; I told him it was perfectly all right, it was a Court Order and it was up to him to do what the Court said; Deputy Marshal Newcomb told defendant if he didn't open the door

(Testimony of M. E. Monagle.)

he would break it in; Newcomb went out to get a pinch bar, came back and said he couldn't get one and tried to get Marshal White over the phone and said he couldn't get him; I imagine that was about a quarter after four; I went out and got Marshal White to go down there; I arrived back there just as Marshal White asked Attorney Robertson if the writ was all right; defendant had his attorney, Simon Hellenthal, and he arrived there just after defendant came in; Attorney Hellenthal stayed there until after Marshal White threatened to put them all in jail if they didn't behave themselves; during that time Attorney Robertson did not call defendant, Tuckett, or any of defendant's employees any names of any kind; he told Marshal White that the writ was all right, it was a Court Order, and to go ahead and do his duty; Attorney Robertson left a minute or two after I came back the second time; Deputy Marshal Newcomb threatened to break down the door to the booth but didn't do anything and United States Marshal White told them if they wouldn't open the door he was going to put them all in jail and then break the door in, that the writ directed him to it; those two are the only ones that made any statement or did anything. [643]

N. A. ROBINSON

N. A. Robinson, plaintiff's witness, by deposition duly taken August 16, 1932, testified:

Direct Examination

I reside at 1722 Durango Street, Los Angeles, California; I have held the following positions with plaintiff; installation engineer, service engineer, district service supervisor, division service superintendent, technical inspection superintendent, operating manager; I am familiar with the agreements dated March 28, 1929 (plaintiff's exhibits Nos. 1 and 3) and the supplemental agreements dated September 4, 1929 (plaintiff's exhibits Nos. 2 and 4) signed by the parties hereto, and referred to in the first and second causes of this action relative to certain sound reproducing equipments in the defendant's motion picture theatres at Juneau and Ketchikan, Alaska; plaintiff's Western Division, operating department, service, technical inspection and installation branches had charge of the installment of said equipments and the carrying out by plaintiff of the terms of those four agreements; plaintiff kept official records of what it did to perform the terms of those and of similar or analogous agreements and of the condition of the sound reproducing equipments in defendant's Juneau and Ketchikan theatres and in other theatres; I was in charge of that division during 1929, 1930, and 1931, and the operations of that branch or division are under my supervision or control and the official

(Deposition of N. A. Robinson.)

records of that division and of those operations are in my charge; on behalf of plaintiff, Harry Taylor, E. V. Smith, D. Knowlton, F. Foulon, R. Lawrence, R. C. Little, E. S. Tobey, G. I. Albright, and J. B. Darragh, Jr. made inspections of and minor adjustments in the sound reproducing equipments in defendant's theatres in Juneau and Ketchikan, Alaska, during the time that those equipments were in those theatres; those men are qualified sound engineers by experience and training, and graduates of technical schools, and also graduates of a special course given by this company in the maintenance and installation of sound [644] picture equipment; they were all over twenty-one years of age; before employing them, plaintiff ascertained they each had those qualifications; their duties were the installation and servicing of sound picture equipment; they were instructed to and they did make written reports of what they found or did upon their visits to the defendant's theatres in Juneau and Ketchikan, to their respective supervisor and to the theatre management; the Western Division operating department which is under my control, has charge of the keeping of those reports; those reports that I know of are now on file in this case, attached to the depositions of J. B. Darragh, Jr., F. Foulon and D. Knowlton, the carbons having been secured from the files of the company for attachment to the deposition of the respective engineers; Darragh, Albright, Knowlton and Lawrence are still in plain-

(Deposition of N. A. Robinson.)

tiff's employ; it was plaintiff's practice from the time the equipment was installed until it was removed, to have an employee regularly stationed in Alaska to make inspections and adjustments as frequently as required to keep the equipment in defendant's motion picture theatres in Juneau and Ketchikan operating satisfactorily; from July 11, 1930, until the equipment was removed from the theatres, plaintiff maintained a stock of service parts or materials in both Juneau and Ketchikan for use in connection with inspecting and making minor adjustments in the equipments in defendant's motion picture theatres, and plaintiff's engineers at all times carried a stock of spare parts with them; the purpose of maintaining said stock was to protect equipment against possible failure; spare 41 type amplifier was kept at Ketchikan; spare 42 type amplifier was kept at Juneau; in addition to the materials listed in the emergency material parts for engineers' kits; the following items were carried at all times by engineers in servicing equipment: 1 P-222520 cushion assembly modified, 1 TA-7049 coupling, 1 D-48560 condenser, 1 189048 tungar [645] bulb, 2 3-A photo electric cells, 6 8-volt 4½ ampere exciting lamps, 3 239-A vacuum tubes, 1 205-D vacuum tube; I now produce said list of emergency material parts for engineers' kits.

Whereupon said list was received in evidence marked plaintiff's exhibit No. 46, which consists of an itemized list of said parts.

(Deposition of N. A. Robinson.)

Whereupon Witness Robinson further testified: all of said stock was available for use in defendant's theatres and a number of small parts such as tubes and other items were furnished both theatres from the stocks carried by the engineers; I did not see the defendant at any time during the period from September 1, 1929, to February 10, 1930; I wrote the letter (defendant's exhibit No. F-6) to defendant Gross on June 11, 1930, with the thought of placing a service arrangement in effect which would better insure against interruptions at the Coliseum Theatres in Juneau and Ketchikan; we never received an answer to our letter so assumed that defendant did not wish to adopt the suggestions contained therein; no agreement was entered into with Gross as a result of said letter. [646]

PLAINTIFF'S EXHIBIT NO. 46

reads as follows:

RESTRICTED DISTRIBUTION— 8.34

ERPI PERSONNEL ONLY

ELECTRICAL RESEARCH PRODUCTS INC.

Equipment Bulletin

Emergency Material Parts for Engineers' Kits

Replacing Service Bulletin #36, File 8.34

1. Purpose

- 1.1 To list the "Emergency Material Parts" to be carried by Engineers regularly servicing installations and to outline the routine for obtaining and disbursing these parts.

(Deposition of N. A. Robinson.)

1.2 To revise the information contained in Service Bulletin #36, File 8.34 which may now be destroyed.

2. General

2.1 One set of "Emergency Material Parts" consisting of the parts and quantities as hereafter outlined will be provided for each Engineer regularly servicing installations, and such Engineers as may be selected by the local supervisory personnel, to be carried in the regular Service Kit case. "Emergency Material Parts" loaned to Engineers are considered as a part of the Emergency Stock of the Branch Office to which they regularly report. The original parts and replacements for disbursed parts are to be obtained from that Office.

2.2 In the event an Engineer is transferred, the "Emergency Material Parts" are to be returned to the Office from which they were obtained, and if a set of parts is required in his new location they will be furnished by the new Office.

3. Parts

3.1 The "Emergency Material Parts" are divided into two classes—"Billable" items and "Non-billable" items.

3.11 "Billable Items". The following parts when replaced in an installation from

(Deposition of N. A. Robinson.)

“Emergency Material Parts” are billable to the Customer at the installed price. A part replaced on a full price basis should be destroyed locally, on a free replacement it must be returned to the Stores Division on a R.G. Tag. The customary provisions covering free replacements shall apply to these parts.

Quantity	Material
1	Condenser, 95-D (43-A, 10-A Amplifier, etc.)
8	Condensers, D-92583 (Replaces 21-CB).
1	Gear, Fibre P-220741 (For 707-A Drive).
4	Brushes, 3511946 (For KS-5161 Motor).
4	Brushes, 260682 (For KS-5260 and 5258 Type Motors).
4 ^o	Film Guide Rollers, P-221124 (For 1 Type Sound Unit).
2 ^o	Adjusting Nuts, P-221123 (For 1 Type Sound Unit).
1 ^o	Pinion Gear, P-220729 (For 712-A Drive).
2 ^o	Guide Rollers, P-217241 (For D-Spec Att.).

[647]

^o Material not included in former Bulletin.

^{oo} Formerly 1 Film Guide Roller Assembly (Det. 6A-ESO 318880) was provided. Parts of the assembly not provided for by the Bulletin will *not* be replenished after the present supply is exhausted

3.111 It is suggested that the Engineer automatically return to the Branch Office six of the D-92583

(Deposition of N. A. Robinson.)

Condensers immediately upon equipping all of the 42 and 46 Type amplifiers in his territory with D-Spec condensers. (See Equipment Bulletin—"Condensers, D-92583 and 181-A", File 4.05). As the condensers are then to become a part of the regular Emergency Stock, the Branch Office should anticipate their return to prevent an over-stock of this item.

3.12 "Non-Billable Items". The following parts when disbursed from "Emergency Material Parts" in the Field, may be supplied without charge to the Customer. The replaced parts are to be destroyed locally.

Quantity	Material
4	Resistors-Durham Metalized, KS-6376 (0.5 Megohm).
4	Resistors-Durham Metalized, KS-6376 (10.0 Megohm).
2	Springs, Leaf (Ends) Det. 7-ESO-320735, (For 707-A Drive).
2°	Springs, Leaf (Center) Det. 8-ESO-320735, (For 707-A Drive).
2	Clips, Leaf Spring, Det. 4 ESO-320735, (For 707-A Drive).
1°	Steel Disc, P-220739 (For 705-A Shaft).
6°	Screws, P-215620 (For 705-A Shaft).
6°	Lockwashers, P-221021 (For 705-A Shaft).
4°	Springs, P-223374 (For Film Chute).

(Deposition of N. A. Robinson.)

- 12° Machine Schews 1/2", No. 2-56 R.H. Steel Nickel Dip (For Film Chute).
- 12° Hexagonal Nuts, No. 2-56 Steel Nickel Dip (For Film Chute).
- 6 Chain Links (5-B-2) Chain.
- 6 Washers, Rubber P-213995 (For 1-A Rep. Arm).
- 6 Screws, Bristo, Large 5/16" x 18 x 5/16".
- 6 Screws, Bristo, Small 3/16" x 32 x 3/16".
- 6 Screws, Headless Set, Guide Roller Shaft, .138"—32 x 5/16" Cup P-217337.
- 6 Screws, Holding Retaining Collar RHIMS, .125"—40 x 1/4" P-224271 (1-A Sound Unit).
- 6 Screws, Reprodncer Needle Holder P-211555.
- 6 Screws, Reprodncer Mounting, D-212709, (For 4-A Rep.).
- 6 Screws, Special Tapered Dowel P-221006 Det. 10-ESO-318386 (Light Gate Carrier Frame Set Screw).
- 6 Screws, Guide Roller Collar RHIMS. .112"—36 x 3/16" P-221122.
- 6 Screws, P-157566 (For cover of 702-A Control Cabinet).

°Material not included in former Bulletin.

[648]

4. Disbursement of Parts

4.1 Engineers shall replace defective parts with material carried as "Emergency Material Parts" whenever applicable on routine, appointment or emergency calls.

4.11 All "Billable items" supplied from the "Parts Kit" must be covered by an S.D. Order and the order marked "Confirming delivery from kit".

(Deposition of N. A. Robinson.)

4.12 All "Non-billable" items supplied from the "Parts Kit" should be listed on the call report. An S.D. Order shall not be issued.

4.2 When Customers request a quantity of any item carried as a part of "Emergency Material Parts", the items should not be disbursed from the kit, but should be ordered according to the regular ordering procedure in effect at the installation, i. e., S.D. Order or Call Report Method, and the normal S.D. Order charge classifications shall apply. The "Non-billable" items are supplied on a no-charge basis *only* when disbursed from the "Emergency Material Parts" kit carried by the Engineer. If the same parts are ordered by the Exhibitor from either a Branch Office or the Stores Division for shipment direct to the installation, the Exhibitor will be billed.

5. Replenishments

5.1 "Billable Items" will be replaced to the Engineer upon receipt at the Branch Office, of the S.D. Order covering the disbursement from the Engineers' "Emergency Material Parts". The replenishments will be sent to the Engineers' home address unless he specifies another address on the reverse side of the S.D. Order. Shipment will not be made to an installation on the itinerary.

(Deposition of N. A. Robinson.)

5.2 "Non-Billable Items". When the Engineers' supply of "Non-billable" items becomes low, he should list on the back of the District Office Copy of a call report, the quantity, code number and description of all items required to bring his supply up to normal.

5.3 The Engineer shall sign and forward to the Branch Office the copy of the Journal Bill which accompanies the delivery of "Emergency Material Parts" from Branch Office Stock.

6. Branch Office Procedure

6.1 When material is shipped to an Engineer's "Emergency Material Parts" kit, Journal Bill Form ERPI 308 shall be originated in duplicate. (Any two copies may be used). It shall designate the Engineer's name and address, a description of the material and the number of the S.D. Order or the date of the Call Report requesting the shipment.

6.12. The original shall be sent with the material to the Engineer who will sign and return it to the Branch Office. Upon its return to the Office, it shall be filed in the T.I. & Service Kits folder, 8.34, of the General File. [649]

(Deposition of N. A. Robinson.)

- 6.13 The duplicate shall be used to post the stock Record cards (See 6.3) and then kept in the follow-up file until the original is received from the Engineer, after which it should be destroyed.
- 6.2 The spare stock of Engineers' "Emergency Material Parts" in Branch Office Emergency Stock shall be replenished by requisitioning from the Stores Division on "Authorization for shipment", Form ERPI 123 in the regular manner. However, "Non-billable items" shall be charged to W.O. #1017, while "Billable" items shall be charged to the regular Emergency Stock number of the Branch Office.
- 6.3 A record of all "Billable" items in Emergency Stock and issued to Engineers shall be kept by means of the stock record cards KP-1104. It is not necessary to originate cards for the "Non-billable" items, ordered against W.O. #1017.
- 6.31 *Two cards* shall be kept in the same pocket of the Kardex File for each "Billable" item that the Engineer carries. The first card to represent the material actually in Emergency Stock and the second card to represent material carried by Engineers.

(Deposition of N. A. Robinson.)

6.32 When "Billable" material is received from the Stores Division, it shall be posted in the regular manner on the first card. When "Billable" material is sent to the Engineer, it shall be posted on the *first* card showing shipment to kit, (Show "Kit" in space marked "Order No."), and on the *second* or Engineers' card showing the quantity shipped to kit (Show the Engineer's initials in the space marked Order No.).

6.33. When the Engineer supplies material to an installation and an S.D. Order is received in the Branch Office (In accordance with Paragraph 4.11), an Emergency Stock Shipping Order, Form ERPI 241 shall be originated and a number assigned in the regular manner. This disbursement by the Engineer shall be posted on the *second* card, showing shipment number in the space marked "Order Number".

6.34 The "on hand" columns of the first and second cards should indicate at all times, the total amount in Branch Office and in Engineers' Kits, respectively.

(Deposition of N. A. Robinson.)

6.4 It is not necessary to maintain a formal record of the "Non-billable" items other than the copies of requisitions and receipt of shipments from the Stores Division.

6.5 The inventory of Emergency Stock in each Office must include the billable items carried by Engineers. This total can be obtained from lists submitted by Engineers or from the second card. It is suggested that both figures be obtained for checking purposes.

TGW*MK

Page #4.

Issued by

Issue #1

Operating Dept.-Equipment Div. April 17, 1931

[650]

J. S. BRIGGS

J. S. Briggs, plaintiff's witness, by deposition duly taken August 26, 1932, testified:

Direct Examination.

I reside at 7737 - 19th Ave., N. E., Seattle, Washington; I have been employed by the plaintiff corporation as installation engineer in Virginia, Pennsylvania, and New Jersey from August to December, 1928; service engineer at Portland, Oregon, from December, 1928, to July, 1929; technical inspector in Oregon and Washington from July, 1929, to October, 1929; service supervisor in Seattle, Washington, from October, 1929, to March, 1931; senior engineer in Seattle, Washington, from March 1931, to April, 1931; technical inspector from April

(Deposition of J. S. Briggs.)

to May, 1931; and as service engineer stationed in Seattle, Washington, from May, 1931, to the present date; I have a bachelor of science degree in mechanical engineering from Oregon State College; since August, 1928, I have been engaged exclusively in the installation, inspection and service of Western Electric theatre sound reproducing apparatus; previous to my transfer to plaintiff I was engaged in the Western Electric Company's plant in Chicago, Illinois, since January, 1924, where my work was engineering connected with the design, construction and installation of special machinery and electrical apparatus; I know the defendant Gross; in response to the telegram,

DEFENDANT'S EXHIBIT NO. Q-1,

reading as follows:

Juneau, Alaska, Feb. 3, 1930.

R. H. Pearsall

Electrical Research Products Inc.

Los Angeles, Calif.

Check covering our account mailed twenty-eighth receipt bills return to Juneau What is the matter we can not get replacements on two three nine tube We have four coming none arrived yet At present we have no spare on this tube Must have spares also we are entitled to more than twenty minutes service per month which is about all we get.

Night Letter Collect

Coliseum.

(Deposition of J. S. Briggs.)

plaintiff took the following action about immediately sending a service man to Juneau, for the following reason; I received a wire [651] from Los Angeles from P. M. Walker in charge of service on the West Coast for electrical Research Products, Inc. in reference to the telegram sent February 3, 1930, to Pearsall, Electrical Research Products, Inc., Los Angeles, from Coliseum, Juneau, about replacements of tubes and also complaint on service; the wire from Walker which is the original wire received by me, I make a part of my answer here.

Whereupon said telegram was received in evidence marked

PLAINTIFF'S EXHIBIT NO. 45-A

and reads as follows:

Feb. 4, 1930.

J. S. Briggs, ERPI

458 Skinner Bldg., Seattle, Wash.

Coliseum Juneau wired us as follows quote what is the matter We cannot get replacements on two three nine tube We have four coming none arrived yet At present we have no spare on this tube Must have spares We have a loose connection in system somewheres When will service man arrive unquote Wire theatre status immediately and if necessary rush extra tube stop Advise.

P. M. WALKER.

(Deposition of J. S. Briggs.)

Thereupon Witness Briggs further testified: that wire did not ask for the immediate sending of a service man to Juneau, accordingly no such arrangements were made; it did inquire however, when a service man would arrive; I wired E. V. Smith, an engineer of the Electrical Research Products Inc., who was then in Cordova, Alaska, installing sound equipment there; a carbon copy of this wire, which I retained and which is a part of my office records, I now produce.

Whereupon said wire was received in evidence marked

PLAINTIFF'S EXHIBIT NO. 45-B

and reads as follows:

Seattle, Wn.

Feb. 4, 1930

E. V. Smith, ERPI Engr.

Empress Theatre

Cordova, Alaska

Coliseum Theatre Juneau advise have loose connection in system stop Also they have ordered four two thirty nine aye tubes stop Ess dee order has not been received but we are forwarding four tubes on boat leaving fifth stop Make sure we receive ess dee order stop According to Los Angeles you will service all Alaskan houses from now on.

Night Letter.

J. S. BRIGGS

[652]

(Deposition of J. S. Briggs.)

Whereupon Witness Briggs further testified: that wire was delivered into the hands of the Western Union Telegraph Company for transmittal to Smith via Alaska Cable; Smith replied to my wire that he could not come for six weeks to service the Juneau Theatre; I now produce his original wire and make it a part of my answer.

Whereupon the telegram was received in evidence marked

PLAINTIFF'S EXHIBIT NO. 45-D

and reads as follows:

Cordova, Als. Feb. 5, 1930

J. S. Briggs

ERPI Four Fifty Eight Skinner Bldg.,
Seattle.

Retel will be impossible to service Juneau or Ketchikan until installations are completed at Anchorage and Fairbanks which will be at least six weeks yet Regards.

E. V. SMITH

Whereupon Witness Briggs further testified: I had sent the wire (plaintiff's exhibit No. 45-B) to Smith for the purpose of acquainting him with the complaint of the Coliseum Theatre at Juneau and determining what action he could take in the matter as it had been the intent of plaintiff that he should do the servicing of theatres in Alaska, as well as

(Deposition of J. S. Briggs.)

the installing of new equipment; I also determined from schedules that a service engineer could be had in Juneau, Alaska, by February 12, 1930, and I so informed the Coliseum Theatre at Juneau by my wire to them of February 5, 1930; the carbon copy of this wire, which I retained and which is part of my office records, I now produce.

Whereupon said wire was received in evidence marked

PLAINTIFF'S EXHIBIT NO. 45-E,

which reads as follows:

Seattle, Wn.

Feb. 5, 1930.

Coliseum Theatre

Juneau, Alaska

Tubes shipped today Engineer arrives twelfth Advise nature loose connection.

Straight wire.

J. S. BRIGGS

Whereupon Witness Briggs further testified: that wire was delivered by me into the hands of the Western Union Telegraph Company in Seattle, for transmittal via Alaska Cable System to [653] the Juneau Coliseum Theatre; I make it a part of my answer here; a few days after February 5th I received a letter from the Coliseum Theatre at Juneau advising me that all their troubles had been straightened out; this letter which was the original

(Deposition of J. S. Briggs.)

letter received by me from the manager of the Coliseum Theatre at Juneau, is plaintiff's exhibit No. 41. [654]

Whereupon Witness Briggs further testified: as no engineer was then immediately requested, nor had any ever been immediately requested, I sent up a service man at the regular time, which was about February 22, 1930; as previously stated by me herein, the telegram of February 3, 1930 (plaintiff's exhibit 45-A) did not ask for the immediate sending of a service man to the Coliseum Theatre, Juneau, nor did it appear to be in serious trouble which would necessitate immediate aid of the service engineer; it was their custom, as it is the custom of theatre operators generally and especially of outlying theatres, to transmit a complete description of their trouble, if at all serious, to their closest service office; the Coliseum Theatre, Juneau, personnel were aware of this custom, as is shown by their wire of January 17, 1930, from this same theatre at Juneau, Alaska, in which is given a detailed description of a trouble the theatre was having; this wire, which is the original wire received by me, I now produce.

Whereupon said wire was received in evidence marked

(Deposition of J. S. Briggs.)

PLAINTIFF'S EXHIBIT NO. 45-C,

identical with one telegram in defendant's exhibit series No. N, and reads as follows:

Juneau, Als., Jan. 17, 1930

Electrical Research Products

458 Skinner Bldg., Seattle

We have a short in our equipment when we throw lever from film to disc we blow out fuse in battery room Cant use disc film side okay Advise how to find trouble must know as it is impossible to get service man here in time

COLISEUM THEATRE

Whereupon Witness Briggs testified further: the wire dated February 3, 1930 (defendant's exhibit No. Q-1) addressed to Pearsall in care of Electrical Research Products, Inc., Los Angeles, and signed "Coliseum", was referred to me through plaintiff's Los Angeles office instead of directly to the Seattle Office [655] from the Coliseum Theatre at Juneau, Alaska; the loose connection did not seem to be bothering them much, as the nature of it was not described in the telegram; however, as it would have soon been time to service these theatres again, I believed it advisable to service them as quickly as practicable; to this end I consulted schedules as to when this could be done; I found that February 12, 1930, was the earliest practical date and I so ad-

(Deposition of J. S. Briggs.)

vised the Coliseum Theatre at Juneau by wire, to which I have heretofore referred (plaintiff's exhibit No. 45-E) and to which I refer at this point; as previously testified to by me, I received only a few days after February 5th a letter from Charles Tuckett, manager of the Coliseum Theatre, Juneau (plaintiff's exhibit No. 41) indicating to me that they were in no need of immediate aid; they had not answered my wire of February 5, 1930, requesting them to state the nature of their trouble (plaintiff's exhibit No. 45-E) in order that we might correct it by wire; they informed me by this letter that their trouble was remedied; as their trouble was remedied, and as extra tubes had been shipped it was plain to see that it was not necessary to vary our regular call schedule by making a call sooner, nor did they request such; defendant's theatres were being serviced at regular periodical intervals and as no showing was made for emergency aid, or for the emergency sending of an engineer, an engineer was sent at the regular time and not to be there on February 12th as I had previously informed them; eighteen days after receipt of said telegram (plaintiff's exhibit No. 45-C), on or about February 22, 1930, I sent to Juneau Service Man E. S. Tobey, who had several years' experience in the design of and manufacture of radio sets and whom, when he was transferred to the Seattle territory, I gave a direct examination regarding servicing of our equipment, and also an examination

(Deposition of J. S. Briggs.)

on his general knowledge of electricity, and found him proficient in these matters; he had about one year's experience installing and maintaining Western Electric theatre sound systems; as supervisor of service of the [656] plaintiff company in the Seattle District I was in charge of service and I subsequently sent other service men to Alaska for the purpose of inspecting and making minor adjustments in the sound reproducing equipments in defendant's motion picture theatres in Ketchikan and Juneau; the names of those service men are F. Foulon, R. E. Lawrence and H. C. Hurlburt; I do not know their ages exactly but would judge them to be about 27 or 28, 32 or 33, and 26 respectively; as to their qualifications I know that all engineers hired by our organization for work on sound reproducing systems were hand-picked men; our personnel department, who hired them, investigated their qualifications thoroughly, going particularly into their technical knowledge and education and their experience in parallel fields; their references and personality were given careful consideration; a three weeks' training course was given to those hired, and men not passing the examination at the end of their course were dismissed; in order to insure that only high qualified engineers should service theatres, those were chosen from the installation engineers having the most experience and best all round qualifications and no engineer was taken direct from the training course and placed in serv-

(Deposition of J. S. Briggs.)

ice; Foulon was in Alaska from March 25, 1930, to September 11, 1930; Lawrence from October 7, 1930, to September 5, 1932; Hurlburt from December 22, 1930, to February 10, 1931; Foulon was permanently stationed in Alaska from March 25, 1930, to September 11, 1930; Lawrence was permanently located in Alaska from October 7, 1930, to April, 1932; Hurlburt was stationed in Alaska only for the period required to install one theatre in Juneau and one in Ketchikan; their duties were to inspect and make necessary adjustments to Western Electric Theatre Sound Equipments in service and to install new equipments; I was present, as well as J. A. Gage, during a conversation with defendant on or about April 2, 1930, in Gage's private office in [657] plaintiff's offices in Seattle, Washington; Mr. Gage called me into his office and explained that defendant objected to paying his back service charges on the ground that he was not receiving periodical service calls; defendant stated there were several periods when no engineer of plaintiff visited his theatre for over two months; I told defendant he was misinformed, and produced routine service call reports for every month in which the theatres were serviced; each report was signed by both the manager of the theatre and the engineer; defendant then stated that a service engineer was required due to a loose connection and one was promised on February 12, 1930, but none arrived until February 24, 1930; I then showed defendant his manager's

(Deposition of J. S. Briggs.)

letter dated February 5, 1930 (plaintiff's exhibit 41) already referred to in my testimony, saying the trouble was temporarily corrected by the theatre personnel which rendered it unnecessary to send an engineer before the regular service date; I now refer to that letter again at this point; this was the substance of the conversation had while I was present which was only a short time; no threats were made by me and to my knowledge no threats of any kind were made to defendant; I left the room before payment was made by defendant; I believe the amount was between \$500 and \$600 to be applied on service charges and merchandise charges; in December, 1930, or early in 1931 in plaintiff's offices in Seattle I had a conversation with defendant when he came in to interview one of the salesmen to attempt to have plaintiff to not lease equipment to Mr. Kubley who was opening a theatre in Juneau and one in Ketchikan; and as no salesmen were in I talked to him instead; defendant said he understood Kubley was leasing our equipment for one house in Juneau and one in Ketchikan; and he said there was not room for additional theatres in either Juneau or Ketchikan, also that Kubley was not financially [658] responsible and advised me it would be risky for plaintiff to do business with him; I told defendant I had nothing to do with sale of equipment or the credit of an exhibitor and then asked him when he expected to pay his back service charges to which he made no reply but laughed and

(Deposition of J. S. Briggs.)

left the office; no threats were made about removing the sound reproducing equipments from defendant's theatres in Juneau and Ketchikan. [659]

J. A. GAGE

J. A. Gage, plaintiff's witness, by deposition duly taken December 19, 1933, testified:

Direct Examination.

I reside at 6824 Linden Avenue, Seattle, Washington; I was employed by plaintiff as district sales representative for three years, to September, 1930; I have known defendant Gross from 1920 to the present date; I had negotiations with defendant Gross relative to his entering into agreements with the plaintiff for it to install sound reproducing equipment in both his motion picture theatres in Juneau and Ketchikan, Alaska.

Whereupon plaintiff propounded by deposition to Witness Gage the hereinafter mentioned questions and offered to prove the facts stated in said witness' respective answers to those questions; but defendant objected to each of said questions and to the proof contained in each of said respective answers upon the following grounds: that each of said questions was irrelevant, incompetent, and immaterial, tending to modify the terms of the contract which is in writing and attempting to testify to negotiations which led up to the contract and merged

(Testimony of J. A. Gage.)

into the contract, especially so in view of the provisions of the contract that there are no other contracts between the parties, also not rebuttal, and referred to contracts that had been revoked by the contracts of March 28, 1929.

The Court sustained said objections to each of said questions and answers, to each of which rulings plaintiff then and there excepted. Those questions and answers were as follows:

Q. How did those negotiations happen to be entered into?

A. Gross approached me and requested two sound reproducing equipments for the first possible dates they could be installed in both his Ketchikan and Juneau theatres.

Q. When did he first see you in that connection?

A. Approximately six months before he received his approved contract.

Q. Where?

A. On the street in the film exchange district located on Second Avenue in Seattle, Washington.

Q. Who was present besides you and Gross?

A. No one. [660]

Q. What, if anything, was done as a result thereof?

A. Two contracts were drawn and signed by Gross and submitted by myself to plaintiff for its approval.

(Testimony of J. A. Gage.)

Q. Did Gross sign any agreement or contract at that time relative to either or both his Juneau and Ketchikan theatres, and, if so, which?

A. Signed both.

Q. Was there one agreement for the two theatres, or a separate agreement for each theatre?

A. A separate agreement for each theatre.

Q. Where did he sign them?

A. Atwood Hotel, Seattle, Washington, in his rooms.

Q. When?

A. That night. I don't remember the date, it was approximately July 7, 1928.

Q. Who was present?

A. My wife and myself, Mr. and Mrs. Gross.

Q. Was any part of those agreements left blank?

A. Yes.

Q. How did that happen to occur?

A. It was impossible to designate the type or size of the sound reproducing equipment until our engineering department could survey the drawings of these theatres and determine the correct type and size for his needs, and it was not possible to determine the correct service charge at that time, although it was agreed that it would not be less than \$29.75 weekly.

Q. Did you have any authority at that time to execute those agreements on behalf of the plaintiff?

(Testimony of J. A. Gage.)

A. I had no authority to execute agreements on behalf of the Electrical Research Products, Inc.

Q. What did you do with those agreements?

A. I mailed them to Los Angeles for approval.

Q. What eventually did the plaintiff do with them?

A. Plaintiff eventually executed them.

Whereupon Witness Gage testified further: I subsequently talked with Gross about executing a supplemental agreement, dated September 4, 1929, relative to the service charge to be paid by him to plaintiff covering inspections and making minor adjustments in the sound reproducing equipment in his two theatres; I discussed [661] this matter with Gross two or three times over telephone and once on December 30, 1929, the time when said supplemental agreements were signed by defendant in the Seattle office of Electrical Research Products, Inc., and at which time a man named Hal Cawthorn was present; at that time Gross asked if his projectionists could service his equipment, stating that he would pay them, and I stated the company's policy would not allow this equipment to be serviced by anyone other than our own engineers; I did not make any threats to him that, unless he signed those supplemental agreements, plaintiff would remove or take out the sound reproducing equipment from his Juneau and Ketchikan theatres; Gross

(Testimony of J. A. Gage.)

came into my office to sign the supplemental agreement and also had with him blank checks on the Behrends Bank to pay the back service charges which were then thirty-one weeks in arrears; we conversed and Gross again asked that I take up with my home office the matter of having his own men service the equipment; I told him this had been done and the decision was final, that they refused to permit anyone outside of their own engineers to service the equipment; I didn't threaten him at all; I told him frankly that he must live up to the terms of his agreement or return the equipment; I said "If you don't want to carry out your agreement, all right." I used such illustrations as "if you do not pay your telephone bill, your telephone will be disconnected." I pointed out to him that in accordance with his contract he was already in default and that it was only our leniency that kept him going as long as he did; without undue persuasion he signed the agreement and paid for thirty-two weeks' back service charges, together with some small amounts, bills of approximately \$15.00; we discussed the question of payments and I told him that if he was to continue the use of the equipment he would have to perform all the provisions of the contract, including the payment of the weekly service charges; Gross said that he wanted to have his own projectionists service the equipment and [662] I advised him that the company's policy would not permit it; he agreed to be

(Testimony of J. A. Gage.)

more prompt in his payments; he signed the checks in blank and I filled in the amounts in his presence; I had mailed to Gross the supplemental agreement for his signature, but he had left Alaska for Seattle prior to receiving them, so he signed the originals that I had retained in my office and delivered them to me on December 30, 1929; Gross paid me for plaintiff money in payment of plaintiff's charges for inspections and making minor adjustments in the sound reproducing equipments in his Juneau and Ketchikan theatres on two occasions, in the office of Electrical Research Products, Inc., Seattle, Washington; on December 30, 1929, he paid me \$1979.60, which balanced both accounts and included payment for one week in advance, and on April 3, 1930, he paid me \$538.00 which covered back service and merchandise items due; I recall no specific conversation occurring on April 3, 1930, other than that defendant had continually at all occasions when I talked with him wanted to have his own projectionists service the equipment, and I continually told him that this could not be done and that the company's policy would not permit it; we also discussed the fact that if he wished to continue the use of the equipment, it would be necessary for him to continue his payments as he had agreed, including the payment of weekly service charges; Cawthorn was present on the first occasion, and on the second occasion, J. S. Briggs, service superintendent in the Seattle District, was present; no threats were made

(Testimony of J. A. Gage.)

to him on either occasion; after those supplemental agreements were signed by defendant and delivered by him to me, I sent them direct to New York to Mr. C. W. Bunn, general sales manager; I did not make any threats to Gross, in the presence of Cawthorn, that unless he, Gross, paid the charges that plaintiff claimed were due for inspections and making minor adjustments in the sound reproducing equipment in defendant's Juneau and Ketchikan theatres, that plaintiff would remove and take out that equipment; I did not make any threats to [663] Gross, in the presence of Cawthorn, that unless he, Gross, signed the two supplemental agreements of September 4, 1929, plaintiff would remove and take out the sound reproducing equipment in Gross' Juneau and Ketchikan theatres; I do not remember any particular conversation had on December 29, 1929, in my office, other than my explanation to Gross of the charges for merchandise which were in addition to the straight service charge; these items amounted to \$7.50 for the Coliseum Theatre, Juneau, and \$8.60 for the Coliseum Theatre, Ketchikan; Gross' operators in Alaska had signed orders for these additional amounts, merchandise items, and it was necessary for me to call Mr. Briggs, who explained to Gross in detail what the items were for and how they were used in connection with the equipment; no threats were made; I told Gross that if he wanted to use the equipment it would be necessary for him to pay the weekly service charges as

(Testimony of J. A. Gage.)

he had agreed to do; I heard no one make any threats at that time, that plaintiff intended to take out or remove the sound reproducing equipment from Gross' Juneau and Ketchikan theatres, unless Gross made said payment. [664]

H. M. WILCOX

H. M. Wilcox, plaintiff's witness, heretofore sworn, further testified:

Direct Examination.

My office has been at 250 West 57th Street, New York City, and I never had an office in Chicago; plaintiff has an office in Chicago but it has nothing to do with equipment or customers in Alaska and never did; I never told defendant or any of his employees I had an office in Chicago; I know Nathan P. Levinson, who was formerly general manager of plaintiff's Western Division with headquarters in Los Angeles, reporting to me; I know N. A. Robinson, who is and was operating manager of plaintiff's Western Division, reporting to Levinson, who in turn reported to me; among the duties of my position with plaintiff I have supervision of the correspondence conducted by plaintiff's New York Office with plaintiff's various licensees relating to servicing their equipment; that comes under my jurisdiction; plaintiff's New York Office keeps a true and accurate record of its correspondence and things of that kind regarding servicing of

(Testimony of H. M. Wilcox.)

equipments of their licensees and has at all times since my connection with them; this letter dated May 20, 1929, is a true copy of the original letter sent to the addressee as shown thereon.

Whereupon plaintiff's letter to defendant dated May 20, 1929, was received in evidence marked

PLAINTIFF'S EXHIBIT 50

and reads:

May 20, 1929

Alaska Film Corp.,
Coliseum Bldg.,
Juneau, Alaska

Attention: Mr. A. D. Gross

Gentlemen:

The installation of the Western Electric Sound Projector Equipment was completed in your Coliseum Theatre, Juneau, Alaska, on May 10, 1929.

We invite your attention to Paragraph 6 of the agreement which provides that the first two weekly payments shall be due and payable on the Saturday following the completion of the in- [665] stallation and thereafter weekly in advance.

As a matter of courtesy, maturity notices of amounts due each week will be forwarded to you, but failure to receive such weekly notices does not in any way relieve you of the obligation to make the weekly payments as provided.

Kindly arrange to issue the necessary instructions to forward checks to this office.

Yours very truly,

Assistant Credit Manager.

(Testimony of H. M. Wilcox.)

Whereupon Witness Wilcox further testified: H. N. Bessy signed that letter, which is a standard form of letter sent to all exhibitors as soon as plaintiff's Credit Department in New York receives notice that an installation is completed, in order to notify the exhibitor when the service day is; on April 29, 1931, about eighty or eighty-five per-cent of all installations of sound reproduction equipments that had been made up to that time were confined to about twenty or twenty-five different makes of equipments, but the balance did not represent any great amount of business; I would say that approximately fifty or seventy-five makes of equipment were available at that time; I know the general conditions as to the market in the spring of 1931 and as to the various makes of sound equipment on the market, but not as to the various terms under which they were being sold or as to the various times in which delivery could be had of them.

I never made any statement in the conversation at which defendant and some of his witnesses were present in Juneau in July, 1929, that the contracts with defendant contained no provision for payment by defendant of service charges.

Thereupon Witness Wilcox further testified: I was present in the Court Room when defendant testified that there was no correspondence between plaintiff and defendant relative to the contract's plaintiff's exhibits Nos. 1 and 3, prior to February 19, 1929, which statement was false; there was cor-

(Testimony of H. M. Wilcox.)

respondence between plaintiff and defendant prior to February 19, 1929, relative to [666] those contracts, plaintiff's exhibits Nos. 1 and 3.

Thereupon Witness Wilcox further testified: I now produce an original telegram received by plaintiff's New York office from defendant's Juneau Coliseum Theatre.

Whereupon defendant's telegram by Coliseum Theatre to plaintiff, through R. A. Quinn, dated November 17, 1929, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 54,

and reads:

NL Collect Juneau Alaska Nov 17 1929
R Q Quinn Electrical Research Products
New York NY

As we have wired before Mr. Gross in New York or on way to Seattle he has your letter contracts wires etc can not do anything on service charges until he okays them have your Seattle representative take this matter up with him when he arrives there around twenty fifth he stops at Atwood Hotel Seattle we have remitted for small items first of month.

Coliseum Theatre.

Thereupon Witness Wilcox further testified: The extent of my experience and knowledge in respect

(Testimony of H. M. Wilcox.)

to servicing theatres that are equipped with sound reproducing equipment is that over the past eight years I have been in more or less constant touch or communication with the leaders of the industry and with exhibitors generally; I have had conferences with such men as Sydney Lentz, [667] Warner Brothers, Richardsons of New Orleans, Willoughby of Atlanta, as well as hundreds of exhibitors, and my experience has been of national scope throughout the United States; I know what the word "service" means as understood by people engaged in the moving picture business and in the operation of sound reproducing equipment; different individuals have different opinions but in general the accepted definition of "service" is this:

"That periodic inspections and adjustments to equipments should be made by an experienced and trained organization and that spare and replacement parts should be available for reasonably quick service to the end that equipments may operate as nearly as possible with a minimum of interruptions, at least interruptions which would affect the box office receipts; that the quality of reproduction be maintained at an efficient standard, so that the public will continue to attend the theatres, and that the project as a whole will not be subject to the danger of financial failure as had every other attempt at talking motion pictures failed—previous attempts. I might say that the matter of

(Testimony of H. M. Wilcox.)

reserve was also included, the reserves at our main warehouse, designed to replenish the emergency stores located in different parts of the country, and also to provide quick replacements of equipments in the event of destruction by fire, tornado, earthquake or other acts of God, at our own expense, as specified in the contract.”

I would say that was the generally accepted definition by the industry of “service” during the time that plaintiff’s equipment was in defendant’s theatre in Juneau and Ketchikan. [668]

M. E. MONAGLE

M. E. Monagle, plaintiff’s witness, heretofore sworn, being recalled, further testified:

Direct Examination.

I returned to defendant’s Coliseum Theatre on April 20, 1931, probably fifteen minutes before the booth was actually opened by United States Marshal White; they were arguing around and Marshal White had threatened to take these people to jail for interfering with the Marshal’s official duty, and about that time, I think, Gross ordered Tuckett to give the Marshal the key and then Marshal White actually opened the booth; just about that time, when the booth was open the Marshal directed

(Testimony of H. M. Wilcox.)

Lawrence to go in and take out what part he was going to take out and Gross said "Take the damn things out anyway. They are no good. I have better machines here to put in," and he also said, "Take them out and throw them in the Bay." He said that to Lawrence and Marshal White; Tuckett, Deputy Marshals Newcomb and Martin, United States Marshal White, Lawrence, Duncan Sinclair, defendant, and myself were present at that time. [669]

R. H. PEARSALL

R. H. Pearsall, plaintiff's witness, heretofore sworn, being recalled, further testified:

Direct Examination.

I received these two telegrams, one from the Coliseum Theatre and one from Witness Tuckett.

Thereupon telegram from defendant by Coliseum Theatre to Pearsall on behalf of plaintiff, dated Wrangell, Alaska, June 13, 1930, and telegram from defendant by Witness Tuckett to Pearsall on behalf of plaintiff dated March 17, 1930, were received in evidence, respectively marked

PLAINTIFF'S EXHIBITS Nos. 57 and 58
and read, respectively:

57

Collect DL Wrangell Alaska June 13 1930

R. H. Pearsall

Electrical Research Prod Co

Los Angeles Calif

Mr Gross just arrived Juneau advise us what our account delinquent will forward check covering letter following.

Coliseum Theatre

58

DL Collect Juneau Alaska Mar 17 1930

R H Pearsall

Los Angeles Calif

Regarding service charges Mr Gross on way to Seattle to take this matter up with Gage will advise you from there

Chas Tuckett Manager Coliseum

Thereupon Witness Pearsall further testified: I was in Los Angeles at plaintiff's office during all the period between September 15, 1929, and February 10, 1930, and defendant never called on me during that time and I did not see him. [670]

D. KNOWLTON

D. Knowlton, plaintiff's witness, by deposition further testified:

Direct Examination.

During the time that I was making inspections of defendant's theatres, neither he nor anyone on his behalf made any complaint to me that the plaintiff was not complying with the provisions of the agreements between plaintiff and defendant relative to plaintiff's making inspections of and minor adjustments in the sound reproducing equipments in defendant's Juneau and Ketchikan theatres.

Cross Examination.

I sailed from Vancouver, B. C., on or about September 27, 1929, on the Princess Louise for Ketchikan arriving there on or about September 29, 1929, and sailed from Ketchikan for Juneau on the Yukon on October 1, 1929, arriving at Juneau on or about October 2, 1929, and I sailed from Juneau for Seattle, Washington, on the Admiral Rogers on October 4, 1929.

J. B. DARRAGH, JR.

J. B. Darragh, Jr., plaintiff's witness, by deposition further testified:

Direct Examination.

During the time that I was making inspections of defendant's theatres, neither he nor anyone on his behalf made any complaint to me that the plain-

(Testimony of J. B. Darragh, Jr.)

tiff was not complying with the provisions of the agreements between plaintiff and defendant relative to plaintiff's making inspections of and minor adjustments in the sound reproducing equipments in defendant's Juneau and Ketchikan theatres. [671]

E. S. TOBEY

E. S. Tobey, plaintiff's witness, by deposition further testified:

Direct Examination.

The only complaint that I am aware of, ever made during the time that I was making inspections of defendant's theatres, that either he or anyone on his behalf made to me that the plaintiff was not fully complying with the provisions of the agreements between plaintiff and defendant relative to plaintiff's making inspections of and minor adjustments in the sound reproducing equipments in defendant's Juneau and Ketchikan theatres, is contained in the note under "remarks" on plaintiff's exhibit No. 12-A.

R. C. LITTLE

R. C. Little, plaintiff's witness, by deposition further testified:

Direct Examination.

I do not remember that Gross or anyone on his behalf made any complaint to me, during the time

(Testimony of R. C. Little.)

that I was making inspections of defendant's theatres, that plaintiff was not fully complying with the provisions of the agreements between plaintiff and defendant relative to the plaintiff's making inspections of and minor adjustments in the sound reproducing equipments in defendant's Juneau and Ketchikan theatres.

F. FOULON

F. Foulon, plaintiff's witness, by deposition further testified:

Direct Examination.

During the time that I was making inspections of defendant's theatres the major complaint that defendant made to me that plaintiff was not fully complying with the provisions of the agreements between plaintiff and him relative to plaintiff's making inspections [672] of and minor adjustments in the sound reproducing equipments in his Juneau and Ketchikan theatres, was that he had no emergency service when the engineer was not in town, although he repeatedly affirmed that the routine inspections were acceptable in all respects; which complaint was made on May 16, 1930, report whereof is contained in plaintiff's exhibit No. 13-D; I reported the complaint to J. S. Briggs, Seattle, Washington, by letter dated May 21, 1930.

(Testimony of F. Foulon.)

Cross Examination.

Over a period of 5½ months I do not recall at this time the names of the steamers on which I arrived at Juneau or Ketchikan, Alaska, as of any particular date. During the time I was in Alaska my principal traveling was done on the steamers "Alaska", "Yukon" and "Aleutian."

H. C. HURLBURT

H. C. Hurlburt, plaintiff's witness, by deposition further testified:

Direct Examination.

During the time that I was making inspections of defendant's theatres, neither he nor anyone on his behalf made any complaint to me that the plaintiff was not complying with the provisions of the agreements between plaintiff and defendant relative to plaintiff's making inspections of and minor adjustments in the sound reproducing equipments in defendant's Juneau and Ketchikan theatres. [673]

G. E. MATHER

G. E. Mather, plaintiff's witness, being first duly sworn, testified:

Direct Examination.

I reside at 949 Maple Avenue, Ridgefield, New Jersey, and have no present association or business

(Testimony of G. E. Mather.)

relation with plaintiff other than as a witness, but I was connected with it from early in 1929 to early in 1933 as Director of Engineering; my experience in connection with the sound moving picture business is as follows:

“Early in 1926 I was employed in the Bell Telephone laboratories and at that time took charge of a group of engineers who were engaged in the study of the fundamental problems connected with the recording and the reproduction of sound and designing the necessary equipment which could be used for that purpose.

This group of engineers prepared—did the experimental work, prepared the designs for the various pieces of apparatus that were required for the recording and reproduction of sound; they wrote the specifications for all these different pieces and tested the products that were turned out from the Western Electric Factory in Hawthorne, and after it was so designed, tested and approved the engineers gave to the reproducing company information on how that equipment should operate and what particular precaution should be taken in the use of that equipment in the field. My experience with the Bell Telephone Laboratories continued until early in 1929 when I was transferred to the Electrical Research Products as Director of Engineering. In my experience in

(Testimony of G. E. Mather.)

the laboratories, my job was to direct and to coordinate the efforts of the various engineers that were engaged in the work. I was not supposed to contribute all the technical knowledge or experience that was required, because at that time the engineers engaged in the work were experts on various subjects, for instance, H. M. Stoller was in charge of the motor design. He is a nationally known figure. Other engineers were engaged on mechanical problems, others on electrical problems, such as amplifiers; in other words we had a group of about fifty experts who were engaged on all phases of the problems that arose in the designing of this new and special apparatus."

I entered the employ of the Western Electric Company in 1902, stayed there until 1913 when they gave me leave of absence to go to Puerto Rico where I was chief engineer of the Puerto Rico Telephone Company from 1913 to 1915 and then returned to the employ of the Western Electric in 1916 and was there continuously with the Western Electric and Bell Telephone Laboratories until 1929 and was in charge of the designing of the synchronous sound picture apparatus [674] that finally became successful as the actual operating feature in moving picture shows; I am thoroughly familiar with the functioning of such equipments as were situated in defendant's Juneau and Ketchikan Theatres; I am familiar with this diagram which shows

(Testimony of G. E. Mather.)

the voltage battery connections to the amplifier in the sound picture booth on sound picture equipment, such as No. 1 and No. 2 amplifier equipment, similar to what was used in defendant's Coliseum Theatres.

Thereupon the diagram was received in evidence marked

PLAINTIFF'S EXHIBIT No. 56,

the original of which exhibit is made a part hereof as *they* cannot be reproduced in print or type-writing.

Thereupon Witness Mather further testified:

"This is a simplified circuit diagram, showing the 12-volt storage battery connections to the film and disc signal lamps to the photo cell amplifier to the exciter lamp of machine number one, to the corresponding elements of machine number 2, to the 41-A amplifier, which is shown on that rack over there, and to the field coils of the horns on the stage. There are four fuses, each one of which is intended to protect one element of this outfit, that is, the first is inserted in the circuit which goes to machine number 2, the second fuse is in the circuit which goes to machine number two, the third fuse is inserted in the circuit that goes to the 42-A amplifier, and the fourth fuse is inserted in the circuit that goes to the field of the horns on the stage. This diagram shows the signal lamp on machine number one cross or short-

(Testimony of G. E. Mather.)

circuited; it shows the disc film switch from the disc and it shows the fuse inserted in the 12-volt battery circuit going to machine number one is blown."

In the event that fuse for Machine No. 1 is blown as indicated, Machine No. 1 can be used for reproducing sound from the disc.

"Because the reproduction of sound from the disc has no connection with the battery circuit; the 12-volt battery circuit that goes to the signal lamp, the sound circuit or disc goes direct from the reproducer through the disc through the fader and to the 42-A amplifier without being connected in any way to the 12-volt storage battery circuit."

The blowing of that No. 1 fuse in the 12 volt storage battery does not affect reproduction from the disc here on Machine No. 1 or No. 2 or the reproduction of sound from film No. 2 because No. 2 fuse which provides the battery current to Machine No. 2 is still going and it does not interfere at all with the operation of No. 41-A amplifier because the fuse to that amplifier is entirely separate [675] from the fuses to the Machines Nos. 1 and 2; the short-circuiting of the disc signal lamp on Machine No. 1, so far as that diagram is concerned, would have no effect on the reproduction of sound from the disc on either No. 1 or No. 2 machines; if the trouble described in the testimony of defendant's witnesses

(Testimony of G. E. Mather.)

Tuckett, Louis Lemieux, and Ned Lemieux is correctly indicated on that diagram, it would not be possible to reproduce sound from film on Machine No. 1; it is important in storage battery maintenance to keep the contacts clean and tight at all points in all batteries on that kind of equipment, as well as all the other switch contacts because otherwise electrolic action and corrosion is set up, high resistance developed and noise is introduced into the amplifier system. It is necessary to keep the B battery clean, because if dust forms or collects on top of those B batteries it provides a leakage path which is very likely to introduce noise into the system since the power which is developed in the early parts of the circuit is so infinitesimally small compared with the sound reproduced in the theatre from the loud speaker; in other words if a very small element of trouble is introduced in the early part of the circuit that trouble is magnified millions or possibly billions of times before it reaches the loud speaker; also contacts must be clean, because any dirt or variation in the resistance which occurs while the apparatus is in operation is magnified thousands or millions of times before that disturbance reaches the loud speaker, out of which comes the sound that is heard in the theatre.

R. E. ROBERTSON

R. E. Robertson, plaintiff's witness, being first duly sworn testified:

Direct Examination.

I have resided in Juneau twenty-eight and a half years; my profession is Attorney-at-Law in which I have been actively engaged since 1913, having been admitted in 1911; I am and, ever since the commencement of this action, have been plaintiff's counsel; at the time that I took defendant's deposition on March 16, 1932, I asked him, among other things, to produce a statement showing his alleged profits; his counsel, Mr. Faulkner and Judge Si Hellenthal, were present at that time; subsequently on August 15, 1932, Judge Hellenthal brought to my office and served upon me in answer to the demand that I had made on defendant, these two papers that I now produce, one of which purports to be a comparative operating statement of defendant's Ketchikan Theatre for the period of time shown therein, together with a recapitulation on the outside, and the other is a similar statement for defendant's Juneau Coliseum Theatre, with a recapitulation thereon, which recapitulations were not prepared by me but were attached to the statements when I received them; the statements purport to show the receipts and expenses of those respective theatres.

Whereupon said statements were received in evidence, marked

(Testimony of R. E. Robertson.)

PLAINTIFF'S EXHIBITS 55 and 55-A

respectively, and read:

RECAPITULATION

Juneau Alaska Theater

Total Receipts 12 Mo. 4/1/30 to 3/31/31.....	\$51,218.37
Total Expenses 12 Mo. 4/1/30 to 3/31/31.....	33,914.14

Profit Excluding Film Cost.....	\$17,304.23
Less Film Cost	10,800.00

Net Operating Profit	6,504.23
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Total Receipts 12 Mo. 4/1/31 to 3/31/32	33,390.93
Total Expenses 12 Mo. 4/1/31 to 3/31/32.....	26,511.06

Profit Excluding Film Cost	\$ 6,878.87
Less Film Cost	10,800.00

Net Loss from Operations	\$ 3,921.13
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Operating Profit 12 Months 4/1/30 to 3/31/31.....	\$ 6,504.23
Loss from Operations 12 Mo. 4/1/31 to 3/31/32.....	3,921.13

Loss 12 Mo. 4/1/31 to 3/31/32 over 4/1/30 to 3/31/32.....	\$10,425.36
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Film Cost based on budget of \$900.00 per month for
Juneau Theatre.

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COMPARATIVE OPERATING STATEMENT

Juneau — Excluding Film Costs

	Receipts July, 1929 to Mar., 1931 incl.	12.mo. period	Receipts Apr., 1931 to Mar. 31, 1932	Loss in Receipts	Operating Expenses July, 1929 to Mar., 1931 as per sheet 1	12 mo. period	Operating Expenses Apr., 1931 to Mar. 31, 1932 as per sheet 2
July, 1929	\$ 6,308.40				\$2,511.25		
Aug., 1929	5,547.15				2,168.55		
Sept., 1929	5,393.35				2,489.98		
Oct., 1929	5,501.71				4,099.59		
Nov., 1929	6,068.02				2,208.73		
Dec., 1929	4,985.99				3,121.28		
Jan., 1930	4,633.35				2,344.06		
Feb., 1930	3,757.91				2,575.94		
Mar., 1930	3,674.55				3,566.18		
Apr., 1930	4,991.35	4,991.35	2,592.29	2,389.06	3,825.18	2,835.18	2,376.90
May, 1930	4,324.10	4,324.10	3,301.26	1,022.84	2,923.46	2,923.46	2,824.63
June, 1930	4,219.28	4,219.28	3,003.13	1,216.15	4,908.41	4,908.41	1,895.68
July, 1930	4,295.50	4,295.50	2,860.25	1,435.25	2,676.83	2,676.83	1,971.70
Aug., 1930	4,458.06	4,458.06	3,165.95	1,292.11	2,150.11	2,150.11	1,825.21
Sept., 1930	5,156.80	5,156.80	2,845.50	2,311.30	2,092.28	2,092.28	2,208.78
Oct., 1930	4,861.79	4,861.79	3,518.09	1,343.70	2,885.16	2,885.16	2,384.46
Nov., 1930	3,907.90	3,907.90	2,524.50	1,383.40	2,851.58	2,851.58	1,785.60
Dec., 1930	5,517.55	5,517.55	2,790.44	2,727.11	2,577.64	2,577.64	2,887.10
Jan., 1931	3,347.41	3,347.41	2,257.17	1,090.24	1,749.46	1,749.46	1,841.51

(Testimony of R. E. Robertson.)

(Testimony of R. E. Robertson.)

	Receipts July, 1929 to Mar., 1931 incl.	12 mo. Period	Receipts Apr., 1931 to Mar. 31, 1932	Loss in Receipts	Expenses July, 1929 to Mar., 1931 as per sheet 1	12 mo. period	Expenses Apr., 1931 to Mar. 31, 1932 as per sheet 2
Feb., 1931	3,078.68	3,078.68	2,456.80	621.88	2,379.10	2,379.10	2,193.13
Mar., 1931	3,059.95	3,059.95	2,075.55	984.40	2,884.93	2,884.93	2,316.36
	97,088.80	51,218.37	33,390.93	17,817.44	58,999.70	33,914.14	26,511.06
Total Receipts 12 months Apr. 1, 1930 — Mar. 31, 1931						\$51,218.37	
Total Expenses 12 months Apr. 1, 1930 — Mar. 31, 1931						33914.14	
Profit Excluding Film Costs						17,304.23	
Less Film Costs						10800.00	
Net Operating Profit						6504.23	
Total Receipts 12 months Apr. 1, 1931 — Mar. 31, 1932						33390.93	
Total Expenses 12 months Apr. 1, 1931 — Mar. 31, 1932						26511.06	
Profit Excluding Film Costs						6878.87	
Less Film Costs						10800.00	
Net Operating Loss						3921.13	
Net Operating Profit 12 months Apr. 1, 1930 — Mar. 31, 1931						6504.23	
Net Operating Loss 12 months Apr. 1, 1931 — Mar. 31, 1932						3921.13	
Net Loss 12 months 4/1/31 - 3/31/32 over 4/1/30 - 3/31/31						10,425.36	

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Jun The	Interest	Trav.	Taxes			
July,	258.85	35.00		2511.25		
Aug.,	126.10	25.00		2168.55		
Sept.,	257.80	190.00		2489.98		
Oct.,	278.70	742.86	683.10	4099.59		
Nov.,	283.84	288.51		2208.73		
Dec.,	606.45	366.70		3121.28		
Jan.,	274.85	160.00		2344.06		
Feb.,	284.35	170.20	7.90	2565.94		
Mar.,	146.05	80.40	683.10	3566.18		
Apr.,	495.65	273.15	51.15	3835.18		
May,	329.75	126.20		2923.46		
June,	327.95	218.25	10.00	4908.41		
July,	320.35	10.00		2676.83		
Aug.,	333.43			2150.11		
Sept.,	327.60			2092.28		
Oct.,	317.60	132.75	739.10	2885.16		
Nov.,	308.05	464.10		2851.58		
Dec.,	292.50			2577.64		
Jan.,	510.27	25.00		1749.46		
Feb.,	200.00			2379.10		
Mar.,	581.60		728.10	2884.93		

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Nov., 1930	3,741.25	932.47	1,273.47
Dec., 1930	2,813.15	1,326.58	864.35
Jan., 1931	3,290.35	1,341.56	626.65

Juneau Theatre	Receipts	Fr.	Fire Ins.	Wages	Adv.	Oil	Room & Light	Films	Repairs	Misc. Exp.	Interest	Trav.	Taxes
July, 1929	6308.40			781.65	77.40	69.77	116.26	13.77	632.07	540.25	258.85	35.00	2511.25
Aug., 1929	5547.15	157.34	151.00	1028.21	126.20	71.37	161.94		207.83	113.56	126.10	25.00	2168.55
Sept., 1929	5393.35	56.75		1046.83	71.55	69.87	151.10		353.33	110.75	257.80	190.00	2489.98
Oct., 1929	5501.71	158.00	253.90	927.90	85.40	124.74	242.25	1800.00	448.31	154.43	278.70	742.86	683.10 4099.59
Nov., 1929	6068.02	76.10	126.00	942.45	96.90	89.68	118.65	2000.00	75.06	161.54	283.84	288.51	2208.73
Dec., 1929	4985.99	109.66		1040.40	102.25	129.10	156.97	1221.92	513.45	96.30	606.45	366.70	3121.28
Jan., 1930	4633.35	180.44		1030.38	131.16	201.78	214.49	1850.00	86.21	64.75	274.85	160.00	2344.06
Feb., 1930	3757.91	96.20		980.00	115.35	266.53	161.53	141.15	231.67	262.04	284.35	170.20	2565.94
Mar., 1930	3674.55	236.56		1595.92	93.45	165.02	155.30	700.00	216.47	193.91	146.05	80.40	683.10 3566.18
Apr., 1930	4991.35	125.32		1403.90	118.95	247.88	379.20	2120.66	568.81	171.15	495.65	273.15	51.15 3835.18
May, 1930	4324.10			1727.34	125.00		382.15	200.00	204.05	28.97	329.75	126.20	2923.46
June, 1930	4219.28	43.21	500.00	1235.40	311.05	233.10	410.40	1050.00	788.05	831.00	327.95	218.25	10.00 4908.41
July, 1930	4295.50	262.02		634.96	175.35	104.31	160.00	1840.49	822.99	186.85	320.35	10.00	2676.83
Aug., 1930	4458.06	209.54	243.75	648.96	140.60	82.26	122.93	900.00	295.89	72.75	333.43		2150.11
Sept., 1930	5156.80	5.00		1275.69	115.95	76.80	105.90	1450.00	24.47	160.87	327.60		2092.28
Oct., 1930	4861.79	17.54		965.00	75.60	151.65	142.20	400.00	71.69	272.03	317.60	132.75	739.10 2885.16
Nov., 1930	3907.90	65.84		1022.50	52.05	155.07	316.49	500.00	352.93	114.55	308.05	464.10	2851.58
Dec., 1930	5517.55	41.87	135.90	1087.50	81.20	183.57	160.99	1124.50	398.65	195.46	292.50		2577.64
Jan., 1931	3347.41	26.85	42.00	647.00	103.95	213.29		1965.00		181.10	510.27	25.00	1749.46
Feb., 1931	3078.68	150.40		950.60	420.88	194.85	227.45	2463.95	140.22	94.70	200.00		2379.10
Mar., 1931	3059.95	48.65		979.00	172.23	170.91	180.94	1792.75		23.50	581.60		728.10 2884.93

(Testimony of R. E. Robertson.)

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RECEIPTS & EXPENSES — JUNEAU & KETCHIKAN

Juneau Theatre	Apr. 1931 to 1932 Excluding Film Costs										
	Receipts	Repairs	Fr.	Fire Ins.	Wages	Adv.	Oil	Light	Gen. Exp.	Int.	Taxes
Apr., 1931	2592.29		403.94		957.00	172.23	170.91	188.65	193.42	290.75	
May, 1931	3301.26	289.86	63.13	175.00	719.50	179.20	227.58	209.47	323.64	637.25	
June, 1931	3003.13	224.21			545.00	166.95	153.72	205.25	200.75	399.80	
July, 1931	2860.25	234.38	180.66		531.20	344.00	201.60	135.46	13.50	330.90	
Aug., 1931	3165.95	140.01	95.64	185.75	565.00	209.30	160.80	121.75	127.66	363.90	
Sept., 1931	2845.50	202.87	119.64	230.00	565.00	149.90	75.60	158.93	221.74	340.50	
Oct., 1931	3518.09	232.34	19.80		496.70	128.90	100.80	135.12	200.95	345.85	724.00
Nov., 1931	2524.50	309.15	60.00		465.00	143.60	165.45	137.85	129.15	375.40	
Dec., 1931	2790.44	834.00	39.95	207.40	648.00	95.90	215.60	135.10	243.15	395.00	73.00
Jan., 1932	2257.17	149.07			526.50	84.70	224.60	207.20	250.04	399.40	
Feb., 1932	2456.80	107.98	123.50		630.00	126.50	276.10	209.85	319.70	399.50	
Mar., 1932	2075.55		50.27	27.70	500.00	105.75	242.04	189.60		407.00	794.00

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COMPARATIVE OPERATING STATEMENT

Ketchikan — Excluding Film Cost

	Receipts July 1929 to Mar. 31, 1931 incl.	12 Mo. Period	Receipts Apr. 1931 to Mar. 31, 1932	Loss in Receipts	Operating Expenses July, 1929 to Mar. 31, 1931 As per # 1	12 Mo. Period	Operating Expenses Apr. 1931 to Mar. 31, 1932 As per # 1
July, 1929	7,519.70				1,630.81		
Aug., 1929	6,234.07				1,438.19		
Sept., 1929	6,682.75				847.69		
Oct., 1929	7,109.70				940.71		
Nov., 1929	5,705.85				946.25		
Dec., 1929	4,314.20				1,148.63		
Jan., 1930	4,462.30				1,358.27		
Feb., 1930	3,942.70				908.39		
Mar., 1930	4,310.35				868.80		
Apr., 1930	4,727.70	4,727.70	2,987.15	1,740.55	1,917.20	1,917.20	683.97
May, 1930	4,848.35	4,848.35	2,961.27	1,887.08	923.31	923.31	1,094.37
June, 1930	4,504.05	4,504.05	2,877.05	1,627.00	1,343.69	1,343.69	692.52
July, 1930	4,821.25	4,821.25	2,957.80	1,862.45	1,233.49	1,233.49	780.57
Aug., 1930	4,365.35	4,365.35	2,853.20	1,512.15	892.17	892.17	990.13
Sept., 1930	5,625.75	5,625.75	2,990.18	2,635.57	1,038.20	1,038.20	532.98
Oct., 1930	4,613.00	4,613.00	2,607.40	2,005.60	966.90	966.90	796.80
Nov., 1930	3,741.25	3,741.25	2,302.00	1,439.25	932.47	932.47	1,273.47
Dec., 1930	2,813.15	2,813.15	1,437.35	1,375.80	1,326.58	1,326.58	864.35
Jan., 1931	3,290.35	3,290.35	977.84	2,312.51	1,341.56	1,341.56	626.65

vs. W. D. Gross

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(Testimony of R. E. Robertson.)

(Testimony of R. E. Robertson.)

	Receipts July 1929 to Mar. 31, 1931 incl.	12 Mo. Period	Receipts Apr. 1931 to Mar. 31, 1932	Loss in Receipts	Operating Expenses July, 1929 to Mar. 31, 1931 As per # 1	12 Mo. Period	Operating Expenses Apr. 1931 to Mar. 31, 1932 As per # 1
Feb., 1931	3,059.05	3,059.05	1,444.24	1,614.81	741.07	741.07	704.12
Mar., 1931	3,422.00	3,422.00	1,383.85	2,038.15	839.81	839.81	643.80
	100,212.87	49,831.25	27,779.33		23,584.19	13,496.45	9,683.73
Total Receipts 12 months Apr. 1, 1930 to Mar. 31, 1931						49,831.25	
Total Exp. 12 months Apr. 1, 1930 to Mar. 31, 1931						13,496.45	
Profit Excluding Film Cost						36,334.80	
Less Film Cost						10,800.00	
Net Operating profit						25,534.80	
Total Receipts 12 months Apr. 1, 1931 to Mar. 31, 1932						27,779.33	
Total Exp. 12 months Apr. 1, 1931 to Mar. 31, 1932						9,683.73	
Profit Excluding Film Cost						18,095.60	
Less Film Cost						10,800.00	
Net Operating						7,295.60	
Net Profit 12 mo. Apr. 1, 1930 — Mar. 31, 1931						25,534.80	
Net Profit 12 mo. Apr. 1, 1931 — Mar. 31, 1932						7,295.60	
Net Loss 12 mo. 4/1/31 - 3/31/32 over 4/1/30 - 3/31/31						18,239.20	

(Testimony of R. E. Robertson.)

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Ketchikan	Receipts	Repairs	Fr.	Fire Ins.	Wages	Adv.	Oil	Lights	Gen. Exp.	Int.	Taxes
Apr., 1931	2987.15		87.74		557.50	100.55		78.95		39.23	
May, 1931	2961.27			403.90	465.00	98.65		90.15		36.67	
June, 1931	2877.05		16.56		360.00	125.65	54.42	91.45		44.44	
July, 1931	2957.80		25.68		390.00	123.94	123.35	88.60		29.00	
Aug., 1931	2853.20		25.45		350.00	119.20		87.20		25.78	382.50
Sept., 1931	2990.18		23.78		270.00	107.80	43.25	73.40		14.75	
Oct., 1931	2607.40	197.35	19.25		370.00	112.85		79.35		18.00	
Nov., 1931	2302.00	668.37	10.75		370.00	127.90		80.90		15.55	
Dec., 1931	1437.35				370.00	130.00	265.73	83.95		14.67	
Jan., 1932	977.84		8.73		255.00	111.75		94.40	156.77		
Feb., 1932	1444.24		37.00		345.00	80.00		74.20	145.25	22.67	
Mar., 1932	1383.85		24.38		270.00	94.50	102.00	95.40		57.52	

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(Testimony of R. E. Robertson.)

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RECAPITULATION

Ketchikan Theatre

Total Receipts 12 months 4/1/30 to 3/31/31.....	\$ 49,831.25
Total Expenses 12 months 4/1/30 to 3/31/31.....	13,496.45

Profit Excluding Film Costs	\$ 36,334.80
Less Film Costs	10,800.00

Net Operating Profit for period	\$ 25,534.80
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Total Receipts 12 months 4/1/31 to 3/31/32.....	\$ 27,779.33
Total Expense 12 months 4/1/31 to 3/31/32.....	9,683.73

Profit Excluding Film Costs	\$ 18,095.60
Less Film Costs	10,800.00

Net Operating Profit for period	\$ 7,295.60
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Net Profit 12 Mo. 4/1/30 to 3/31/31 as above.....	\$ 25,534.80
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Net Profit 12 Mo. 4/1/31 to 3/31/32 as above.....	7,295.60
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Net Loss 12 Mo. 4/1/31 to 3/31/32 over 4/1/30 to 4/31/31	\$ 18,239.20
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Note: Film Costs based on budget of \$900.00 per month for Ketchikan Theater.

Thereupon Witness Robertson further testified: I had a telephone conversation with defendant on March 31, 1931, and remember substantially what was said in that conversation; he telephoned me along about half-past five in the afternoon on that day and told me he had received my letter dated March 26, 1931. defendant's exhibit F-10; he said he was very much exercised about this demand, because Witness Tuckett had concealed it from him

(Testimony of R. E. Robertson.)

and he didn't know anything about it and wanted to have further time; I told him in effect that I couldn't give him any further time, that I had been taking this matter up with him or Tuckett for several months and that my patience was about exhausted; he then told me that he had expected Captain Lathrop to arrive in Juneau, I think it was the Steamer Yukon, on either the same day or the day before he telephoned, and that he had a deal on with Lathrop under which the latter was negotiating to buy out his entire string of Alaskan Theatres for \$190,000.00, but he had been advised that Lathrop had the flu and was detained and couldn't come up, and was in the New Washington Hotel, in Seattle; he asked for further time and said if I would give him further time he would take the boat leaving, I believe, that night or the very next day, and go to Seattle to see [682] Lathrop and he promised me either he or Lathrop would wire me the money the next Monday; so I then told him under those circumstances I would give him until April 6, 1931, in which to clear up the account; I did not hear by wire or anything from him the next Monday; neither in that conversation nor any other time did defendant tell me that he didn't owe this money to plaintiff.

I also had a conversation with Witness Tuckett about this time; not having heard from Gross with the money on April 6, having heard from neither him nor Lathrop, on April 7 I saw Tuckett and

(Testimony of R. E. Robertson.)

I told him that he would have to have the money by April 10 or I would bring the suit; I don't recall specifically what Tuckett said in that conversation; I was trying to impress upon him that April 10 was the final date, if it wasn't paid by that time, I would bring suit; Tuckett never told me at any time that defendant did not owe the money to plaintiff in this case, on the contrary Tuckett on numerous occasions promised to pay the account, on some occasions he told me he would pay it, on other occasions he said he had sent money to pay them.

I didn't go to the Coliseum Theatre on the afternoon that the equipment was replevined from it until Marshal White telephoned to me; I was attending the Legislature that afternoon and when I got back to my office they told me they wanted me at the Coliseum theatre; I went over there after half past four in the afternoon; I don't know when any of the parties arrived as they were there when I got there, except Witness Monagle who was not there at that particular time; Mr. Simon Hellenthal was there, Tuckett, Marshal White was there or else came in when I was there, and two of the deputy marshals were there; they seemed to be having more or less of a row or quarrel about it, Marshal White asked me about it and I told him as far as I knew the writ was a valid writ, they hadn't questioned it, that we had the bonds put up in it, and as far as I knew it was all right to serve the writ; I did not threaten to or advise anybody to break

(Testimony of R. E. Robertson.)

down the door; I did not call Tuckett [683] or Gross or any of them any names.

Cross Examination.

Thereupon Witness Robertson further testified: When I said Mr. Hellenthal was there, I meant Simon not Jack Hellenthal.

NATHAN LEVINSON

Nathan Levinson, plaintiff's witness, upon deposition duly taken August 18, 1932, testified:

Direct Examination.

I reside in Hollywood, California; I held an official position with the plaintiff during the summer of 1927 to October, 1929; defendant Gross never called upon me nor did I see him during the period from September 1, 1929 to February 10, 1930.

HARRY B. GILMORE.

Harry B. Gilmore, plaintiff's witness, by deposition duly taken August 18, 1932, testified:

Direct Examination.

Defendant did not call upon me during the period from September 1, 1929 to February 10, 1930, nor during that period, to my knowledge, did he call at plaintiff's New York office.

(Testimony of R. E. Lawrence.)

Thereupon defendant's counsel, in open court, stated that defendant did not call upon plaintiff or any of its officials either in New York City or Los Angeles during the period between September 1, 1929 and February 10, 1930. [684]

R. E. LAWRENCE

R. E. Lawrence, plaintiff's witness heretofore duly sworn, being recalled, further testified:

Direct Examination.

I was present on April 20, 1931, when plaintiff's equipment was replevined from defendant's Juneau theatre; I went to the Court House about two o'clock with Witness Monagle where he secured the writ of replevin and then Monagle, Deputy Marshals Martin and Newcomb and I went to the Coliseum Theatre; Attorney Robertson did not go with us; upon arriving at the theatre they attempted to serve the writ on Witness Tuckett, who in turn called defendant; the booth was locked and we couldn't get in; either defendant or Tuckett said he didn't know where the key to the booth was; there was quite a bit of discussion over quite a length of time and finally Witness Monagle went after Marshal White and when he came down there was considerable bickering and finally somebody called up Attorney Robertson; I went there to follow the orders of the Marshal who took me along

(Testimony of R. E. Lawrence.)

in order to effect the disconnection, as I was a technical man and knew how to do it; defendant's attorney, Si Hellenthal, came there; plaintiff's attorney Robertson did not call either Tuckett or Gross any names and remained there only about five minutes; there was some more arguing and finally Marshal White threatened to arrest Gross for interfering with an officer in performing his duty and eventually they produced the key; defendant was a little bit upset and he made a remark to take the plaintiff's equipment and throw it in the bay and I said, "That is O. K. with me." The booth was opened and I went in under the marshal's direction to take out the photoelectric cell, the 40-A pickup, that is the disc pickup, and disconnect the amplifier and horn panel; while I was packing up those necessary parts which would effectually disconnect the equipment, Tuckett came and started to disconnect No. 1 machine; I told them if they desired to have it removed, I preferred to do it myself; there was an awful lot of conversation and it left a rather confused picture in my [685] mind but Deputy Marshal Newcomb was the one who threatened to get a crowbar to break down the door of the booth; he did that before Attorney Robertson came.

I was also present in a way when the equipment was removed from the Ketchikan Theatre; I arrived there after our Universal Bases had been removed and the Wonderphone equipment had been installed; the Universal Bases were sitting in the

(Testimony of R. E. Lawrence.)

foyer outside of the booth, the charging equipment was still up in the battery room, and the amplifier, which is plaintiff's exhibit No. 16, had been removed from its former location, although I believe it was still in the booth, but it was not in operating condition at that time; they had Wonderphone operating when I got there; I remained in Juneau after April 20, 1931, leaving here April 27, 1931, and arriving in Ketchikan at ten o'clock a. m. April 28, 1931, remaining there until May 8, 1931.

On every call that I made to defendant's Juneau and Ketchikan Theatres there was something to be done, on numerous occasions grease was added to the drives, which was necessary; if grease was to be added to the drives I would not think that grease had been added the day before. The various acts and things, shown to have been done to the machines on my routine service reports, would not have been necessary had those machines been properly serviced a day or so or a week before the respective things that I performed to them; I base my answer on the fact that tubes don't disintegrate over night and exciter lamps don't—that is, they don't disintegrate so they get black in the outside and inside; and battery connection don't become loose over night and grease doesn't leak out over night.

Thereupon Witness Lawrence further testified: During the time that I performed service work in Seattle I serviced the Mission theatre which is the same theatre Witness Cawthorn testified about; I

(Testimony of R. E. Lawrence.)

serviced it from January, 1930, until the middle of April, [686] 1930, every two weeks; I know what service was given the Mission Theatre during the time Witness Cawthorn was there; that service was rendered to that theatre every two weeks, during the time I serviced it and during the time Al Johnson serviced it; I relieved Johnson in June, 1932, when he was on his vacation and serviced it for two weeks, the service was every two weeks; I don't know how long Johnson serviced it. I personally know what was Johnson's routine or schedule, taking it myself during his absence, and his schedule was a call every two weeks on some houses, every week on some of them; but it was not possible for him to have serviced the Mission Theatre every week because he was out of town every other week; he had three theatres in Bellingham, one at Sedro-Woolley, three at Everett, two at Bremerton, one at Mt. Vernon, and one at Anacortes, and during that time he was out of town I don't believe he could have serviced that equipment; I personally know he had those houses to serve; I know that Johnson was a competent service engineer.

I am familiar with the 12 volt storage battery installation, battery switch, and fusing arrangement of the switches that carry the storage battery current to the sound machines in the various parts such as were in defendant's Ketchikan and Juneau theatres, as well as the main 41-A amplifiers and the horns backstage of those theatres, I am acquainted

(Testimony of R. E. Lawrence.)

with plaintiff's exhibit No. 56, which indicates by a very simplified sketch, the 12 volt supply circuits from the battery to each machine and the horns backstage; it is one of our sound circuits; all the circuits have been drawn in a simplified form in order to make the sketch understood; that arrangement of fuses and batteries shown in that diagram is not unique to the installations in the Juneau and Ketchikan Coliseum Theatres but is a standard hook up used in all our equipments of that size wherever they are installed and this system was applicable [687] at the time those equipments were installed. Nothing has been eliminated from that diagram that could have been involved or had any defects in the trouble to which Witnesses Tuckett and Lemieux have testified; they are all shown there; in red ink are what we call speech circuits, or any circuits which result in sound in the auditorium, and show the path from either the photo cell or disc pick-up on to the fader; from the photoelectric cell, for instance, the output is led down here in to the film disc transfer switch that served the purpose of transferring the energy out on through the fader, which is your volume control; from there it is carried into the 41-A amplifier and down to the 42-A amplifier and from that to the horns located backstage; that diagram was prepared under my supervision; this diagram indicates the blown fuse as open and the other fuses

(Testimony of R. E. Lawrence.)

are indicated as being intact; under the conditions as shown there film and disc reproduction would both be realized from Machine No. 2 but from No. 1 you would have disc reproduction but nothing from the film side, the 12 volt supply from the 12 volt battery would be open.

Witness Tuckett's testimony when he said when this trouble happened, "I couldn't use my disc, it blew out the fuse in the battery room," was wrong because the disc requires no 12 volt supply; the equipment from the disc pickup is carried on straight through this red line through into the fader and back into the horns and requires no extraneous voltage supply; there is no way in which a short circuit in either machine would cripple both machines because the equipment is so designed that each one of these circuits from the power supply is separately fused and was designed in that manner to overcome that particular kind of trouble there is no main battery fuse and we don't want any because in the event of that fuse blowing from any cause it would cripple the whole system; under this system each one is separately fused and in case of this trouble would have no effect on this machine or on the main amplifier or the backstage horn field circuit. [688] Witness Tuckett could have used the disc at a time that he said he couldn't use it, because as I pointed out here, the red line from the disc pick-up on No. 1 machine is carried straight through the switch and down through the fader and ampli-

(Testimony of R. E. Lawrence.)

fiers to the horn. When Witness Tuckett in response to plaintiff's question "I understand you couldn't get any sound on account of that particular trouble," answered "Yes, she would blow the fuse," he was wrong because he said he blew a 12 volt supply fuse to that machine and it requires no 12 volt supply fuse to that machine and it requires no 12 volt supply. When Ned Lemieux in his testimony, in response to defendant's question in effect, "If it had not been for that good fortune we would have been shut down", answered "Yes", he was incorrect because you could always get sound from the disc on either machine, but you couldn't use film on that machine because as long as the fuse is open it carries the supply to the lamp and also the amplifiers; but you could use both film and disc on the other machine. The pilot light has no effect on reproduction from the disc; the photo-electric cell amplifier on Machine No. 1 would go out of business when the pilot light was short-circuited because it received the supply through the fuse which blew out and that would render the film operation on that machine No. 1 inoperative, but it would not put out No. 2. I say that Witness Lemieux was wrong in his testimony when being asked whether or not the trouble he testified to would stop the operation in the disc, he said "Yes, it would stop the operation of the entire equipment." He was also wrong when, in response to being asked, in both machines, he said: "Absolutely stops your main amplifier." He

(Testimony of R. E. Lawrence.)

was wrong because the main amplifier is separately fused; you have here the next to the bottom fuse on this panel giving a 12 volt supply to the 41 amplifier, which is the preliminary amplifier on this rack; it is separately fused, therefore blowing the fuse could not possibly effect the supply to the 41-A amplifier, and Lemieux when he stated substantially, in regard to the 41-A amplifier, "Yes it put that out of commission" was incorrect, because as I explained [689] this fuse which blew out in case of that trouble had no direct bearing and was not in circuit with the 41 amplifier; he was incorrect when he said the lamp socket was not fused on the 41 amplifier but on a different one, because this volt supply feeds not only the exciter lamp here on No. 1 machine on the 12 volt supply amplifier, but also the 12 volt supply to the lamp which caused the trouble. This one marked "X" is the one which actually caused the trouble. Following the diagram, plaintiff's exhibit No. 56, you see it receives its supply through the switch and, with that short in here, it blows the fuse over here, which in turn supplies the current to the film amplifier and exciter lamp of that machine; that is the factory wiring, the way they are wired at the factory when the machines come out.

Whereupon the following proceedings were had:

Q. Mr. Lawrence, I think you have already stated you have had considerable experience in

(Testimony of R. E. Lawrence.)

regard to servicing of sound equipment in moving picture theatres?

A. Yes sir.

Q. And had more or less of an extensive knowledge of people engaged in the moving picture business, both exhibitors and the people who put out the machines themselves, is that correct?

A. Yes sir.

Q. Mr. Lawrence, what do you say is the meaning of or definition ascribed to the word "service" by the moving picture industry and people that are engaged in it, either as exhibitors or operators of machines, etc., in respect——

(Question read)

Q. (adding)—To sound reproducing equipment?

A. I have discussed that with quite a number of exhibitors and the bulk of them feel that the service is taken from the angle that it is not an absolute preventative of sound shut down, but well worth the money they spend because of the fact that it eliminates a great deal of that possibility, and for that reason the anticipation of troubles which may occur at some future date, is well worth the money they spend for it.

Mr. HELLENTHAL: I move to strike the answer as not responsive. He didn't define "service" or state the meaning.

(Testimony of R. E. Lawrence.)

The COURT: I think the latter part should be stricken.

Q. In order to explain by whom or from whom anything like that state what your understanding is by that word among moving picture industry and people engaged therein, exhibitors, operators, etc., with reference to sound reproducing equipment, its inspection and adjustment of the system. [690]

A. In order to prevent future breakdowns as much as possible.

Q. Now, Mr. Lawrence, you gave a definition of the word "service" as you understood it to mean. Would you say from your contact and knowledge of the moving picture business and the people engaged therein, that that is the generally accepted definition of that word?

A. Well I can only testify to the ones I discussed it with.

Q. I appreciate that, but the ones you know.

A. I never heard anyone make a distinction—such as that.

Cross Examination.

Thereupon Witness Lawrence further testified: I relieved service engineer Johnson in June, 1932, at which time the Mission Theatre was on his schedule: I don't know whether Johnson serviced the theatre while Cawthorn was there; I didn't see Johnson during that period: I know what his sched-

(Testimony of R. E. Lawrence.)

ule contained but I never [691] saw Johnson go to the theatre during that period and know nothing about it from my own knowledge during the period Cawthorne operated that theatre.

Whereupon defendant moved to strike all of Witness Lawrence's testimony on that subject, which motion was granted and to which plaintiff then excepted.

Thereupon Witness Lawrence further testified: I relieved Johnson for two weeks in June, 1932, during which time I serviced the Mission Theatre once; I was servicing downtown theatres in Seattle relieving one or the other engineer; at the time whenever service was required by whoever they could get hold of; there was always a service man in Seattle who could go to Cawthorn's theatre whenever he required one momentarily day or night; I did not testify that Lemieux and Tuckett did not have the trouble that they testified to; so far as I know they may have had all those troubles; there were certain instructions given them which I presume they followed out but I can't testify as to whether they did or not; the only part of the inspections that I can testify to; that they gave the equipment, was during the time while I happened to be in town; when I was in town I made the inspections but there are certain duties connected with the operation of sound motion picture machines which is required to be done every day and so far as I know they gave it to them; aside from that I suppose that

(Testimony of R. E. Lawrence.)

they let me do the inspecting while I was in the theatre; I know that some items I corrected were not done the day before but if I wasn't there I wouldn't know what they did or didn't do; the average exciter lamp burns 100 hours; that lamp didn't get dark in one day or a week, but I didn't testify as to any particular lamp; I said that any exciter lamp I replaced in one of those theatres required replacement; it couldn't get in that condition in one night or a week's time; a new lamp with average hours from sixty to one hundred, operated in the theatre for about six hours a day will last longer than a week; I say that the lamp [692] that I referred to didn't get black in a week because they don't disintegrate that fast; that is my opinion; I couldn't testify when you ask me to pick a lamp out of certain thousands I couldn't say; there would be no way for me to know. [693]

SUR-REBUTTAL.

HAROLD STABLER.

Thereupon Harold Stabler, defendant's witness, heretofore sworn, further testified: I have gone over the figures to ascertain whether the mistakes found by Witness Cooper were actual mistakes and I have a list of them and I found Cooper's corrections were correct and I made a statement showing what effect that would have on the profit or loss sheets

(Testimony of Harold Stabler.)

of the two theatres, which I now produce, which is a comparative statement of mathematical errors between June 1, 1929, and May 1, 1931, and the same statement for the period of May 1, 1931 to May 1, 1933, for the Ketchikan Theatre.

Thereupon defendant's exhibit Y for identification was offered in evidence but rejected upon plaintiff's objection that it was incompetent, irrelevant, and immaterial and not proper Sur-Rebuttal.

W. D. GROSS

Thereupon defendant on his own behalf, having been heretofore duly sworn, further testified: Jack Davis is now in Seattle; he had nothing to do with the keeping of the books.

Defendant Rests

[694]

Thereupon plaintiff requested the Court to instruct the jury as follows:

“You are instructed that the plaintiff claims that the amount to be paid for inspection and minor adjustment services was left in blank in paragraph six of each of the contracts of March 28th, 1929, plaintiff's exhibits Nos. 1 and 3, because the amount thereof could not be deter-

mined at the time that those two contracts were made and that it was understood between plaintiff and defendant that the amount of that weekly charge should be fixed at a later date.

“In this connection, I instruct you, even though the amount of the weekly charge for inspection and minor adjustment services was left in blank in those original contracts, that does not mean that those services were to be rendered by plaintiff free; but the amount thereof to be paid by defendant may be shown by other evidence to have been agreed upon by the parties. The plaintiff alleges that the amount to be paid for such services was agreed upon between it and the defendant and that it was to be \$29.75 per week for each theatre and plaintiff further alleges that this agreement was expressed in the supplemental contracts of September 4th, 1929, plaintiff’s exhibits Nos. 2 and 4.”

The Court refused to give the foregoing instruction, either in words or substance, to which refusal plaintiff, in the presence of the jury and before it retired for deliberation, excepted.

Thereupon plaintiff requested the Court to instruct the jury as follows:

“The defendant claims that under the original contracts of March 28th, 1929, plaintiff’s exhibits Nos. 1 and 3, no agent or employee of the plaintiff corporation is authorized to alter or modify these contracts, or either of them, in

any way unless such alteration or modification shall be approved by the president or a vice president of the plaintiff corporation or by such representative as may from time to time be designated in writing by either of such officers.

“You are instructed that the plaintiff has submitted evidence tending to show that R. E. Anderson did have authority from the plaintiff corporation to execute the supplemental contracts of September 4th, 1929, plaintiff’s exhibits Nos. 2 and 4, for and on its behalf and that his action in making these supplemental contracts was authorized and approved by the plaintiff [695] corporation through its board of directors, and if you believe this evidence to be true then the requirements of the original contracts relative to altering or modifying them, have been complied with.”

The Court refused to give the foregoing instruction, either in words or substance, to which refusal plaintiff, in the presence of the jury and before it retired for deliberation, excepted.

Thereupon plaintiff requested the Court to instruct the jury as follows:

“You are instructed that under Section 8 of each of the contracts of March 28, 1929, plaintiff’s exhibits Nos. 1 and 3, the defendant agreed to pay to plaintiff its list installation charges as from time to time established for any additional equipment and spare or renewal parts,

furnished or supplied by plaintiff; upon delivery thereof and to pay the transportation charges thereon.

“You are instructed that the evidence in this case shows that the plaintiff pursuant to that section of those contracts furnished and supplied defendant at his Juneau theatre with the additional equipment and spare or renewal parts described in the first cause of action in plaintiff’s amended complaint herein and that there was due and unpaid thereon at the time of the commencement of this suit a balance of \$29.09, and furnished and supplied to defendant at his Ketchikan theatre additional equipment and spare or renewal parts described in the second cause of action mentioned in plaintiff’s amended complaint herein and that there was due and unpaid thereon at the time of the commencement of this suit a balance of \$61.92, and that no evidence has been offered by defendant tending to show that those amounts were paid by him to plaintiff at the time of commencement of this action or since whereas plaintiff offered evidence that said amounts had not been paid and that the same were due at the time of the commencement of this action.”

The Court refused to give the foregoing instruction, either in words or substance, to which refusal plaintiff, in the presence of the jury and before it retired for deliberation, excepted. [696]

Thereupon plaintiff requested the Court to instruct the jury as follows:

“You are instructed that you cannot consider, in ascertaining the amount of such net usable value, any good will or alleged loss thereof because I have heretofore stricken from this case all matters dealing with the question of good will and loss thereof, and, further, you cannot consider any alleged loss of profits in arriving at the amount of the net useable value of said equipments during said periods because the defendant has failed to prove with definiteness and certainty that he lost any profits at either of his said theatres.”

The Court refused to give the foregoing instruction, either in words or substance, to which refusal plaintiff, in the presence of the jury and before it retired for deliberation, excepted.

Thereupon plaintiff requested the Court to instruct the jury as follows:

“You are further instructed that you cannot allow defendant any damages on account of the purchase or cost of installation of new equipments in either of his said theatres because that is not an element of the true measure of damages in this case.”

The Court refused to give the foregoing instruction, either in words or substance, to which refusal the plaintiff, in the presence of the jury and before it retired for deliberation, excepted.

Thereupon the Court charged the jury as follows: [697]

Same Title of Court and Cause.

COURT'S INSTRUCTION TO THE JURY.

No. 1.

Ladies and Gentlemen of the Jury:

We have now arrived at the stage of this case where it becomes incumbent upon the court to instruct you as to the law that will govern you in your deliberations on this case.

The issues in this case are set out in the Amended Complaint, Amended Answer and Reply to Amended Answer as Amended. The pleadings, however are so long, covering, as they do about one hundred pages, that it will be impossible to give you in these instructions more than the barest outline of the issues involved. However, the pleadings will be taken by you to your jury room for your use in your deliberations in this case, and I suggest and recommend that you refer to them for any matter you do not understand or about which you have any doubt.

This is what is known in law as a Replevin suit, brought by the plaintiff, Electrical Research Products Company, Inc., as plaintiff, against W. D. Gross as defendant to recover certain movietone or sound equipment installed by it in the Gross Coliseum theatres at Juneau and Ketchikan, Alaska.

AMENDED COMPLAINT:

The Amended Complaint pleads two causes of action.

As its First Cause of Action plaintiff alleges in substance that on or about March 28th, 1929, it entered into a written contract with the defendant (Plaintiff's Exhibit 1) whereby it granted to defendant a non-exclusive, non-assignable license to use in defendant's Coliseum Theatre at Juneau for a term of ten years certain movietone or sound equipment designated in said contract as Type 2-S equipment, and that it agreed to install same in said theatres and to make periodical or minor adjustments in said equipment after it was so installed, during the term of said lease. [698]

That in consideration for the lease or license to use said equipment so installed by plaintiff in defendant's said theatre and the other covenants, stipulations and representations set forth in said contract of March 28th, 1929, the defendant agreed to make certain payments and to do and perform certain things on his part, as fully set out in said contract.

The Complaint further alleges in substance:

That on or about September 4th, 1929, the (original) contract of March 28th, 1929, was mutually modified, whereby defendant agreed to pay in addition to any other payments required to be made by defendant by said (original) contract, \$29.75 per week as a "service and inspection payment" throughout the term of the lease granted by said con-

tract of March 28th, 1929, as amended and to pay the same at the times and in the amounts specified in said contract.

Plaintiff then alleges in substance; that it complied with all the terms of said contract of March 28th, 1929, and of the same as alleged to have been modified by the alleged supplemental contract of September 4, 1929 (Plaintiff's Exhibit 2), but that the defendant failed and refused to comply with the same on his part but defaulted and continued to default in the payment of sums due for additional equipment, installation and transportation charges, and in the payment of certain weekly payments for so-called "service charges" alleged to be due under the contract of March 28th, 1929, as alleged to have been modified by the alleged subsequent or supplemental agreement of September 4th, 1929.

Plaintiff then alleges that it is the owner of said equipment and is now lawfully entitled to the possession thereof by reason of its ownership thereof and by reason of the provisions of said agreement as allegedly modified, but that said property is wrongfully detained by the defendant from the plaintiff; that plaintiff has made a demand upon defendant that he return the [699] aforesaid property, and defendant has refused to return it or any part thereof; wherefore plaintiff prays judgment for the return of said property, or if return thereof cannot be had, for the value of said property—alleged to be \$6600.00 and for damages for its detention.

It is admitted, however, that the plaintiff now has the property in question in its possession pending the outcome of this action, and therefore in considering the plaintiff's claim you need consider only the question of the plaintiff's rights to its possession.

SECOND CAUSE OF ACTION:

Plaintiff then sets up a Second Cause of Action against the defendant for the possession of like equipment at Ketchikan, which is in almost identical wording with the first, except that the first cause of action covers the equipment at Juneau and the second cause of action covers the equipment in Ketchikan, and the sums alleged to be due plaintiff differ somewhat in amount.

AMENDED ANSWER:

To Plaintiff's First Cause of Action as set out in its Amended Complaint the defendant has filed his Amended Answer, in which he admits in substance the making of the written contract of March 28th, 1929; but denies that thereafter on or about September 4th, 1929, or at any other time or at all said original agreement was modified in writing or otherwise, or that any modified agreement exists between him and the plaintiff, and denies that there is anything due plaintiff from defendant either on account of additional equipment, installation and transportation charges or that he owes or agreed to pay plaintiff \$29.75 per week or any other sum as a "service and inspection payment" as set out

in the alleged subsequent or supplemental agreement of September 4th, 1929; and the defendant generally denies all of the other allegations of [700] plaintiff's Amended Complaint and that plaintiff is entitled to the possession of said equipment or that said property is unlawfully detained by him.

The defendant however admits that plaintiff made a demand upon him for the return of the property mentioned, and admits that he refused to return said property and that he had not returned the same or any part thereof, at the time this cause of action was begun, nor at any other time.

The defendant then sets up three affirmative defenses to plaintiff's first cause of action.

DEFENDANT'S FIRST AFFIRMATIVE DEFENSE:

In the first of these, after setting up the contract of March 28th, 1929 and alleging that it is still in full force and effect, and has never been modified, rescinded or revoked; and

Referring to plaintiff's allegation that this (original) contract was mutually modified on or about September 4, 1929, by a subsequent or supplement agreement (Plaintiff's exhibit 2) the defendant sets up:

1st. That the alleged subsequent or supplemental agreement of September 4th, 1929, is a mere letter addressed to the defendant by the person whose name is signed to it and does not constitute a con-

tract between the parties in accordance with the provisions embodied in the (original) contract of March 28th, 1929, nor was it signed or executed by the parties at all.

2d. That such writing does not constitute a contract between the parties and is void and unenforceable for the reason that the same is without consideration.

3d. That the signature of the defendant to said writing was obtained by duress in the manner set out on pages 8 and 9 of defendant's amended answer. [701]

DEFENDANT'S SECOND AFFIRMATIVE DEFENSE.

As a second Affirmative Defense to plaintiff's First Cause of Action the defendant alleges in substance, on pages 10 and 11 of his Amended Answer:

That the plaintiff wholly failed to comply with provisions of the contract of March 28, 1929, in that it wholly failed to make the regular periodical inspections and render minor adjustment service, as it was required to do by the terms of said contract. That the plaintiff did not make inspection except that on rare occasions, which occurred at irregular intervals, when the plaintiff caused some inexperienced and unqualified youths to call at the defendant's theatre. These representatives of the plaintiff, however, did not inspect the equipment, nor did they make any adjustments except that in

one or two instances, they would do something to the machinery, the defendant does not know exactly what, which rendered the equipment useless, and put it out of commission, so that the defendant's engineers were compelled to put it back into a state of repair. In this connection, the defendant further avers: That the plaintiff never rendered him any regular periodical inspection, nor minor adjustment service. And the defendant further avers: That on several occasions since the installation of the equipment furnished by the plaintiff to the defendant, the equipment became useless as the result of breakdown occasioned by defects in the machines and otherwise, and that on each and all of such occasions, the defendant notified the plaintiff by wire, asking that a service man be forthwith dispatched to Juneau to repair the equipment; and that on each and every such occasion, the plaintiff either ignored the request of the defendant in this regard, or sent a service man weeks after the breakdown had taken place, so that the defendant was obliged to, and did from the first, hire and keep his own engineers at Juneau, who in every case, made the necessary repairs weeks before the arrival of any service man in the employ of the plaintiff. And [702] in this connection, the defendant further avers: That the plaintiff never sent a service man to Alaska in response to a request for service, by the defendant, or otherwise, in connection with the servicing of defendant's theatre, but made a pretense to comply with such requests by having service men pass

through, en route to the Westward and Interior of Alaska, to stop off and call at the defendant's theatre while the steamer on which they were travelling, was in port; and that in all cases, said service men arrived weeks after the repairs which they were supposed to make had already been made by the defendant's engineers. In this connection, the defendant avers: That the plaintiff never rendered any service to the defendant in connection with the repair or maintenance of the equipment installed, nor did the plaintiff do anything that had the effect of keeping said equipment in running order, or that had the tendency to accomplish this purpose; and in this connection it is alleged that the word "service" when used in connection with equipment by those engaged in the motion picture industry, means the service necessary to keep the equipment in repair at all times.

THIRD AFFIRMATIVE DEFENSE:

For a Third Affirmative Defense to Plaintiff's First Cause of Action, the defendant pleads:

That the contract referred to in the Complaint is illegal and void under the provisions of the Clayton Act and the Sherman Anti-Trust Act; but this Third Affirmative Defense has been stricken from the Answer by order of the Court and is not to be considered by you for any purpose whatever.

DEFENDANT'S COUNTER CLAIMS:

The defendant then sets up Two Counter Claims against the plaintiff's First Cause of Action.

In the First Counter Claim the defendant sets up the execution of the contract of March 28th, 1929; he then claims that [703] he complied with said contract in all respects, and paid to the plaintiff the full sum of \$10,500.00 as principal or rental, and interest thereon in accordance with the provisions of said contract, and in addition thereto paid certain sums for freight and cartage on the same. He then alleges that on April 20th, 1931, the plaintiff, in order to coerce him into the payment of money which he claims was not due or owing, commenced this action and pursuant thereto removed the equipment from his Juneau theatre, and that on account of such wrongful removal he has been damaged on account of damages incident to closing down his theatre until new equipment could be installed, for loss of profits; expenses incurred in connection with the purchase of new equipment to save the business from utter loss; loss of or injury to good will and loss of rental value of the equipment taken, in the various amounts set forth on pages 17 and 18 in paragraphs 8 and 9 of his First Counter Claim.

SECOND COUNTER CLAIM.

By his second counter claim defendant seeks to recover from the plaintiff the sums alleged to have been paid by him to plaintiff under duress on account of weekly service charges in the sums set out in Paragraph 4 on Page 19 of his Answer.

DEFENDANT'S ANSWER TO PLAINTIFF'S
SECOND CAUSE OF ACTION:

Against Plaintiff's Second Cause of Action, which relates to the Coliseum Theatre at Ketchikan, the defendant pleads in substance the same answer and affirmative defenses as he pleads to plaintiff's First Cause of Action.

The affirmative defense to the Second Cause of Action pleaded as the Sixth Affirmative Defense to Plaintiff's Second Cause of Action, is the same as the Third Affirmative Defense pleaded to Plaintiff's First Cause of Action, and like it pleads that the entire contract relied upon by plaintiff is illegal and [704] void under the Clayton Act and the Sherman Anti-Trust Act. This defense also has been ordered stricken from the pleadings by the Court and is not to be considered by you for any purpose whatever.

The Defendant's Third and Fourth Counter Claims deal with the parties' relations relative to the defendant's theatre at Ketchikan and are the same in substance as those set up in the defendant's First and Second Counter Claims, except as to the amounts.

REPLY:

For its Reply to defendant's Amended Answer as Amended the Plaintiff, in substance and effect denies all of the affirmative allegations and new matter set forth in defendant's Answer and Affirmative Defenses to both of its First and Second Causes of Action, and reiterates in substance and effect the

facts as pleaded by it in its Amended Complaint; and the plaintiff specifically denies that the word "service", when used in connection with equipment by those engaged in the motion picture industry, means the service necessary to keep the equipment in repair at all times, as alleged by the defendant; and denies that it failed to render the service and inspection called for by its contract of March 28th, 1929 as allegedly modified by the subsequent or supplemental writing of September 4th, 1929.

To the affirmative defenses and counter claims of defendant the plaintiff has further replied that the alleged contracts of September 4th, 1929 are and were not void for any of the reasons assigned therefor by the defendant and has also denied that in order to secure or compel the signature of defendant to the alleged contract of September 4th, 1929, or the payment of so-called service charges, it threatened, at any time, to remove the equipment either from the Juneau or the Ketchikan theatres; has denied that it coerced the defendant into paying any money and also has denied that it failed to render the service required of it by the alleged [705] contract of September 4th, 1929 or by the original contract of March 28th, 1929 as allegedly modified thereby.

The plaintiff replies affirmatively to the defendant's contentions by alleging that at the time of the execution of the contracts of March 28th, 1929 (exhibits 1 and 3) the plaintiff and the defendant mutually agreed together that the weekly charge for

the periodical inspection and minor adjustment service had not been established and that it was then mutually agreed that the amount thereof should be determined at a later date and that under date of September 4th, 1929 they did mutually agree upon the amount to be paid therefor and thereupon entered into the alleged contracts of September 4th, 1929 (exhibits 2 and 4); that these alleged contracts were actually executed by the defendant on the 30th day of December, 1929; that the defendant on that day ratified said alleged contract of September 4th, 1929, by later accepting the service performed by it up to March 7th, 1931 and by voluntarily paying for the same up to May 24th, 1930.

The plaintiff also sets forth in its reply that it continued to render defendant service from the date of the installation of the two equipments up to the 7th day of March, 1931 and that defendant accepted them up to that time; that on that day and up to the time of the commencement of this suit it was ready, able and willing and offered to continue to render such service but that the defendant from that day on refused to accept them.

The plaintiff also sets forth in its reply that when it rendered such service it relied upon the defendant performing his duties under the alleged contract; that defendant knew that plaintiff thus relied upon his performance and believed that he, the defendant, would perform them, and that defendant, by accepting the service cannot now assert that the alleged contracts providing for them and for pay-

ment therefor, that is—the contracts of September 4th, 1929, are void. [706]

The plaintiff further alleges in its reply that prior to the commencement of this suit and before the United States Marshal removed the equipment from the Ketchikan theatre, the defendant Gross in violation of the terms of the contract of March 28th, 1929, (exhibit 3) had discontinued the use of plaintiff's equipment in said theatre and had removed the same from its place of installation in said Ketchikan theatre and some time prior to the commencement of this action and before the said U. S. Marshal seized said Ketchikan equipment, he, the defendant, had installed therein and was then using other talking equipment. [707]

No. 2.

In an effort to further clarify the issues for you I might say that the plaintiff in this case bases its right to recover generally—on each of its causes of action—on two things:

First: That defendant is indebted to it on account of so-called "service charges" which it alleges to be due and unpaid.

Second: That defendant is indebted to it for additional equipment and spare and renewal parts furnished and delivered, which it alleges are also past due and unpaid.

Both of these claims grow out of and are based on the two contracts of March 28th, 1929, and on

those contracts as alleged to be modified or amended by the later or supplemental agreements of September 4th, 1929—and involve the interpretation of those instruments—and several disputed questions of fact in relation thereto.

Both the plaintiff and defendant admit the execution of the two contracts of March 28th, 1929, and that they are valid and existing contracts and both admit that the movietone or sound equipment was installed by plaintiff in the defendant's two theatres pursuant to those contracts. The plaintiff claims that these two supplemental contracts were entered into for the purpose of establishing the weekly charge to be paid by the defendant to it for "periodical inspection and minor adjustment services" under Section 6 of the contracts of March 28th, 1929. This the defendant denies and points out that under Section 4 of the contract of March 28th, 1929, it is provided:

"Products also agrees to make periodical inspection and minor adjustments in the equipment after it shall have been installed."

and contends that this service was to be performed by plaintiff as a part of that contract and without additional cost. He also sets [708] up that Paragraph 6, which plaintiff sets up was incorporated in the supplemental contract of September 4th, 1929, provides:

"The Exhibitor agrees to pay 'Products' throughout the term of the license hereby

granted a 'service and inspection payment' of \$29.75 per week."

and that the term "service" mentioned in that Paragraph 6, when used in connection with the sale or use of motion picture sound equipment, has a meaning when used by persons engaged in that business, other and different from its ordinary meaning, and that the term "service" as so used, means the service necessary to keep the equipment in repair at all times.

The defendant also claims that the alleged contracts of September 4th, 1929, have no effect upon the defendant Gross, because they were executed without consideration.

In this connection I instruct you that when a party promises to do what he is already legally bound to do, or does what he is already legally bound to do, neither such promise nor act is a valid consideration for another promise.

And in this connection I further instruct you that if you believe from the evidence that at the time of the execution of these alleged contracts the plaintiff was already legally bound to render the defendant periodical inspection and minor adjustment services, under the contracts of March 28th, 1929, it cannot recover for such services; or if you believe from the evidence that the "service" referred to in the alleged contracts of September 4th, 1929, is something different or in addition to the "inspection and minor adjustment service" re-

ferred to in the contracts of March 28th, 1929, the plaintiff cannot recover therefor unless he has performed such service; and in this connection I instruct you further that there is evidence before you upon the question of what is meant by the term "service", when used in connection with the sale and use of motion picture sound equipment when used by those engaged in the business of supplying and dealing in motion picture sound equipment; and that if you find that this term [709] "service" has a meaning when used by persons so engaged, other and different from its ordinary meaning, you must apply that meaning to the term as used in said supplemental contract of September 4th, 1929. The question of what is meant by the term when so used by persons so engaged, is a question of fact for the jury, and if the term when so used means something other and different from the "inspection and minor adjustment service" hereinbefore referred to, then there was and is a consideration for the alleged contracts of September 4th, 1929, and plaintiff would be entitled to recover therefor if it performed such "service", but would not be entitled to recover therefor unless it did perform and furnish such service, provided, of course, you find that the "service" mentioned in the supplemental contracts of September 4th, 1929, was not the same "service" provided for in Paragraph 4 of the contracts of March 28th, 1929.

No. 3.

The plaintiff claims that the original contracts of March 28th, 1929, were mutually modified by the execution of two new or supplemental agreements under date of September 4th, 1929.

It is then alleged that the defendant agreed by these alleged supplemental agreements to pay a weekly service charge of \$29.75 under each contract. In opposition to this claim the defendant maintains in the first place, that these alleged contracts of September 4th, 1929, were not executed by the parties at all, in that they were not signed by the plaintiff corporation, and in that the name of the plaintiff corporation does not occur in the body of the instruments.

In this connection I instruct you that the alleged contracts are signed by one "Anderson" who signed the same as "Comptroller" without further describing himself, and that the question of whether said "Anderson" was acting for himself or for the plaintiff corporation is a question of fact to be determined by you under the evidence and these instructions. [710]

In this connection I instruct you that under the original agreement of March 28th, 1929, no agent or employee of the plaintiff is authorized to alter or modify these agreements or either of them in any way, unless such alteration or modification shall be approved in writing by the president or vice-president of the plaintiff corporation, or by such representative as may from time to time be desig-

nated in writing by either of such officers; and I instruct you further that there is no evidence that these alleged contracts were approved by either of such officers. There is before you, however, evidence to the effect that "Anderson" had authority to effect certain contracts for and on behalf of plaintiff, and that said contracts were later ratified and confirmed by the plaintiff by its Board of Directors. I therefore instruct you that these alleged agreements of September 4th, 1929, have no binding force or effect unless they were executed and approved in accordance with said provisions of the original contracts, unless you find the parties afterwards voluntarily ratified these agreements.

No. 4.

I further instruct you that the defendant also claims that the alleged contracts of September 4th, 1929, which it is claimed by the plaintiff modified the original contracts of March 28th, 1929, are unenforceable against him because his signatures thereto were obtained by duress.

In this connection I instruct you that a contract obtained by duress; that is by oppressing a person by threats so as to deprive him of the free exercise of his will, may be avoided on the ground of duress. The question here is, First: Whether the threats alleged were in fact made by the plaintiff or its authorized agents or representatives; and Second: Whether the defendant was thereby bereft of the free exercise of his will and the quality of mind

essential to the making of a contract, and whether the contract was thereby obtained. In other words, duress is not to be tested by [711] the character of the threats, but rather by the effect produced thereby on the mind of the party claimed to have been affected. If the threats are made for the purpose of compelling the doing of that which otherwise would not have been done, and the free will of the alleged victim has been thereby overcome or destroyed, and the alleged victim signs a contract or pays money because of such threats, being at the time, because of such threats, deprived of the free will essential to contractual capacity, it is duress; the material and only material questions being: "Was the threat made for the purpose of overcoming the will of the person threatened?" and "Did it have that effect and was the contract thereby obtained?"

In this connection I instruct you that the defendant claims that the plaintiff's representatives and agents threatened the defendant that unless he signed the alleged contracts bearing date of September 4th, 1929, plaintiff would take out the equipment then in his theatres at Juneau and Ketchikan; that at that time the removal of such equipment would have ruined the defendant's business and caused him great losses; that he signed said alleged contracts bearing date of September 4th, 1929, and each of them, because he believed that the plaintiff and his agent or representative had the power to immediately remove and take away said equip-

ment without any further procedure and without bringing any action therefor; and that he believed that it or they would do so if the said contracts were not immediately signed by him; and that he signed the same solely to protect his business and his property and in order to prevent the losses that would have resulted had he not signed them; and that he would not have signed same or either of them had it not been for the threats so made and the considerations above enumerated.

Therefore, if you find from the evidence that the plaintiff or Mr. Gage, its agent, made the threats referred to for the purpose of forcing the defendant Gross to sign the alleged contracts of September 4th, 1929, and that the defendant, Gross, believed [712] that the plaintiff, or Gage had the power to immediately carry out such threats and would carry out the same unless the alleged agreements of September 4th, 1929, were immediately signed by him, and if you further find that the defendant, as a reasonable man, believed such threats, and that he believed the carrying out of such threats would have resulted in great injury to the business carried on by the defendant in his theatres at Juneau and Ketchikan and would have resulted in great and irreparable loss to him, and further that the defendant signed said contracts in the belief that he had no alternative, and was compelled either to sign said contracts or suffer the loss of his equipment and the consequent loss to or destruction of his business, and that he signed the same solely be-

cludes himself from thereafter avoiding it upon the ground that it was made under duress. [714]

No. 5 $\frac{1}{2}$ -a.

You are instructed that if you find that plaintiff faithfully performed the contracts of March 28th, 1929, and that the contracts of September 4th, 1929 were fairly entered into by and between plaintiff and defendant and that the plaintiff rendered services under them to the defendant and defendant accepted said services though he did not pay for the same then you should return a verdict for the plaintiff.

You are further instructed that even though you should find that the contracts of September 4th, 1929 were made by the defendant under duress, if you further find that the defendant did not repudiate them within a reasonable time after their execution or after he might safely have done so, or that he ratified them and accepted services under them in accordance with these instructions, then, provided you find that plaintiff faithfully performed the contracts of March 28th, 1929 and September 4th, 1929, you should return a verdict for the plaintiff.

No. 5 $\frac{1}{2}$ -b.

If you find from a fair consideration of all the evidence in this case that the contract of September 4, 1929, exhibit "2", relative to the Juneau theatre, was fairly executed between the two parties and that the plaintiff performed the services as con-

templated by said contract relative to the Juneau theatre, or furnished additional equipment and spare and renewal parts to defendant pursuant to said contract of March 28th, 1929, and if you further find that at the time of the commencement of this action the defendant was indebted to the plaintiff in any amount either for any such service or for any such additional equipment or renewal or spare parts, then plaintiff had the lawful right to bring this action and to remove from the defendant's Juneau theatre all of plaintiff's sound reproducing equipment, including all such, if any, additional equipment and spare and renewal parts; and your verdict should be [715] that plaintiff was on April 20th, 1931, and now is, entitled to the possession of said equipment.

If you find from a fair consideration of all the evidence in this case that the contract of September 4th, 1929, exhibit "4" relative to the Ketchikan theatre, was fairly executed between the two parties and that the plaintiff performed the services as contemplated by said contract of March 28th, 1929, exhibit "3" relative to the Ketchikan theatre, or furnished additional equipment and spare and renewal parts to defendant pursuant to said contract of March 28th, 1929, and if you further find that at the time of the commencement of this action the defendant was indebted to the plaintiff in any amount either for any such service or for any such additional equipment or renewal or spare parts, then plaintiff had the lawful right to bring this action to remove from the defendant's Ketchikan theatre

all of plaintiff's sound reproducing equipment, including all such, if any, additional equipment and spare and renewal parts; and your verdict should be that plaintiff was on April 28th, 1931, and now is, entitled to the possession of said equipment.

No. 6.

I further instruct you, Ladies and Gentlemen, that if you find from the evidence under these instructions that there was nothing due the plaintiff from the defendant at the time this action was commenced, then I charge you that the plaintiff had no right to replevin the equipment described in the complaint, and that you must find for the defendant and against the plaintiff upon both of defendant's causes of action.

No. 7.

I instruct you, Ladies and Gentlemen of the Jury, that the agreements of March 28th, 1929, relating to the Juneau and Ketchikan theatres, being Exhibits No. "1" and No. "3" respectively, [716] contain the entire understanding of the respective parties with reference to the subject matter of said agreements and each of them; and that at the time of the execution of said agreements, to-wit, March 28th, 1929, all prior agreements of the parties were merged therein and there was no other understanding, agreement, or representation expressed or implied in any way extending, defining or otherwise relating to the provisions of said agreements or either of them, as to any of the

matters to which said agreements or either of them relate.

And in this connection, I instruct you that said agreements or either of them, do not require the defendant Gross to pay the plaintiff for periodical inspection and minor adjustment; and that no agreement or understanding, if you find there was any agreement or understanding prior to the execution of said contracts or either of them, to-wit, the 28th day of March, 1929, is binding upon the defendant Gross or upon Electrical Research Products Corporation, the plaintiff herein.

No. 8.

I further instruct you, Ladies and Gentlemen of the Jury, that the defendant set up two Counter-Claims to each of the Causes of Action stated in the plaintiff's complaint; and referring to the first Counter-Claim set up by the defendant to the plaintiff's first Cause of Action, I instruct you that if you find from the evidence under my instructions that the defendant complied with all the terms of the contract, Exhibit "1" and paid to the plaintiff the full sum of Ten Thousand Five Hundred Dollars as principal, and paid the interest thereon in accordance with the provisions of said contract; and in all other respects complied with the terms of said contract to be kept and performed on his part; and that the alleged agreements bearing date of September 4, 1929, received in evidence as Exhibit No. "2", are invalid under the evidence and under my instructions; or that if valid the plaintiff has failed in any

way to comply with the terms thereof; and further that the plaintiff cannot recover against the defendant under the first Cause of Action stated in the complaint; then I instruct you that the defendant has a right to recover a judgment against the plaintiff because of the first Counter-Claim set up in defendant's answer in such sum or sums as you may find he may be entitled to under these instructions.

I further instruct you that if you find that the defendant is entitled to recover from the plaintiff on his first Counter-Claim under the evidence and under my instructions, then I instruct you [717] that he can recover: (1) The rental value of the equipment taken out of his Coliseum Theatre at Juneau for the unexpired portion of the lease embodied in his contract of March 28th, 1929, and in this connection I instruct you that it is admitted by the plaintiff that the rental value of the equipment so taken out is \$1,050.00 per year, and that the amount to be fixed by you, if you find the defendant entitled to recover for such rental value, cannot be less than \$8,458.30, together with 8% interest thereon from and after the date that such equipment was removed; and that the amount to be allowed by you on this item cannot be more than \$9,627.03.

I further instruct you that if you find that the defendant is entitled to recover on his first Counter-Claim to the first Cause of Action, he may recover, in addition to the rental value of the equipment as above referred to, the profits, if any, lost by him from the operation of his Juneau Coliseum Theatre

because of the removal of said equipment; provided, that he can only recover, if at all, such profits as he may have proved himself entitled to under the evidence and these instructions.

And in this connection I instruct you that where a loss of profits results from the destruction, interruption, interference or injury to an established business, such profits may be recovered where the defendant makes it reasonably certain by competent proof what the amount of his loss actually was. In this connection I instruct you that the interest upon the capital invested, plus the expenses of the business, deducted from its income, for at least a few months or a few years prior to the interruption produce the customary monthly or yearly net profits of the business during that time and form a reasonably certain and rational basis for computation from which the jury may lawfully infer what these alleged profits, if any would have been during the alleged interruption if it had not been inflicted.

[718]

In this connection and for the purpose of further defining what has heretofore been said, I further charge you that when a regular and established business, the value of which may be reasonably ascertained, has been wrongfully injured or interrupted, the true general rule for compensating the party injured is to ascertain how much less value the business was by reason of the injury or interruption, and allow that as damages. This gives him only what the wrongful act deprived him of. The value of such a business depends mainly on the ordi-

nary profits derived from it. Such value cannot be ascertained without showing what the usual profits are. Proof of the expenses and of the income of the business for a reasonable time anterior to, and during and after the interruption charged, or of facts of equivalent import, is indispensable to a lawful judgment for damages for the loss of the anticipated profits of an established business.

Expected profits are, in their nature, contingent upon many changing circumstances, uncertain and remote at best. They can be recovered only when they are made reasonably certain by the proof of actual facts which present the necessary data for a reasonable and rational estimate of their amount. In this connection, however, I further instruct you that the loss of profits, if you find that there was a loss of profits, must be the proximate, natural and direct result of the alleged wrongful act, provided always, that you find that the removal was unlawful under these instructions, and without the intervention of an independent intervening cause.

In this connection, I further instruct you that the total amount of anticipated profits that can be recovered by the defendant under the first Counter-Claim to the first Cause of Action, cannot be more than \$44,000; that being the amount fixed by the pleadings of the defendant. [719]

I further instruct you that in addition to the rental value of the equipment, and in addition to the loss of profits above referred to, the defendant may further recover, if you find from the evidence and

my instructions that he had a right to recover at all under the first Counter-Claim to the first Cause of Action, for such expenses as he may reasonably and prudently have incurred in good faith in attempting to diminish damages such as are held recoverable under my instructions, and this is so whether the effort is successful or not, provided that it was in good faith. However, under this item, the defendant can only recover as in other cases such damages as he has actually proved.

He claims to have installed new equipment for the purpose of reducing the damages that would otherwise result from the removal of the equipment. If you find that he is entitled to recover because of the removal of such equipment in the Coliseum theatre at Juneau under these instructions, then you may allow him whatever money you may find he has actually paid out in connection with the purchase and installation of such new equipment; provided, that such monies were paid out in a reasonable and prudent attempt, made in good faith to diminish such damages as under these instructions are held to be recoverable; and he is entitled to recover such monies even though the installation of such new machinery or equipment did not result in reducing such damages; provided, that the defendant acted in good faith and for the purpose above stated.

No. 9.

I further instruct you, Ladies and Gentlemen of the Jury, with reference to the second Counter-

Claim set up by the defendant to the first Cause of Action stated in plaintiff's complaint, that if you find from the evidence under my instructions that the defendant paid out other monies to the plaintiff for or on account of service charges, and that such payments were made under duress, as duress is elsewhere defined in these instructions, then I [720] instruct you that the defendant is entitled to recover back the monies so paid by him on that account.

No. 10.

I further instruct you, Ladies and Gentlemen of the Jury, that the defendant set up two Counter-Claims to each of the Causes of Action stated in the plaintiff's complaint; and referring to the third Counter-Claim set up by the defendant, which is the first Counter-Claim to the Second Cause of Action, I instruct you that if you find from the evidence under my instructions that the defendant complied with all the terms of the contract, Exhibit "3", and paid to the plaintiff the full sum of \$10,500.00 as principal, and paid the interest thereon in accordance with the provisions of said contract; and in other respects complied with the terms of said contract to be kept and performed on his part; and that the alleged agreements bearing date of September 4th, 1929, received in evidence as Exhibit No. 2 are invalid under the evidence and under my instructions; or that if valid the plaintiff has failed in any way to comply with the terms thereof; and further that the plaintiff cannot recover against the defendant under the Second Cause

of Action stated in the complaint; then I instruct you that the defendant has a right to recover a judgment against the plaintiff because of the Third Counter-Claim set up in defendant's answer in such sum or sums as you may find he may be entitled to under these instructions.

I further instruct you that if you find that the defendant is entitled to recover from the plaintiff on his Third Counter-Claim under the evidence and under my instructions, then I instruct you that he can recover: (1) The rental value of the equipment taken out of his Coliseum Theatre at Ketchikan for the unexpired portion of the lease embodied in the contract of March 28th, 1929, and in this connection I instruct you that it is admitted by the plaintiff [721] that the rental value of the equipment so taken out is \$1,050.00 per year, and that the amount to be fixed by you, if you find the defendant entitled to recover for such rental value, cannot be less than \$8,458.30, together with 8% interest thereon from and after the date that such equipment was removed; and that the amount to be allowed by you on this item cannot be more than \$9,627.03.

I further instruct you that if you find that the defendant is entitled to recover on his third Counter-Claim to the Second Cause of Action, he may recover, in addition to the rental value of the equipment as above referred to, the profits, if any, lost by him from the operation of his Juneau Coliseum theatre because of the removal of said equipment; provided that he can only recover, if at all, such

profits as he may have proved himself entitled to under the evidence and these instructions.

And in this connection I instruct you that where a loss of profits results from the destruction, interruption, interference or injury to an established business, such profits may be recovered where the defendant makes it reasonably certain by competent proof what the amount of his loss actually was. In this connection I instruct you that the interest upon the capital invested, plus the expenses of the business, deducted from its income, for at least a few months or a few years prior to the interruption produce the customary monthly or yearly net profits of the business during that time and form a reasonably certain and rational basis for computation from which the jury may lawfully infer what these alleged profits, if any, would have been during the alleged interruption if it had not been inflicted.

In this connection and for the purpose of further defining what has heretofore been said, I further charge you that when a regular and established business, the value of which may be reasonably ascertained, has been wrongfully injured or interrupted, the true general rule for compensating the party injured is to ascertain how much less value the business was by reason of the injury [722] or interruption, and allow that as damages. This gives him only what the wrongful act deprived him of. The value of such a business depends mainly on the ordinary profits derived from it. Such value cannot be ascertained without showing what the

usual profits are. Proof of the expenses and of the income of the business for a reasonable time anterior to, and during and after the interruption charged, or of facts of equivalent import, is indispensable to a lawful judgment for damages for the loss of the anticipated profits of an established business.

Expected profits are, in their nature, contingent upon many changing circumstances, uncertain and remote at best. They can be recovered only when they are made reasonably certain by the proof of actual facts which present the necessary data for a reasonable and rational estimate of their amount. In this connection, however, I further instruct you that the loss of profits, if you find that there was a loss of profits, must be the proximate, natural and direct result of the alleged wrongful act, provided, always, that you find that the removal was unlawful under these instructions, and without the intervention of an independent intervening cause.

In this connection, I further instruct you that the total amount of anticipated profits that can be recovered by the defendant under the third Counter-Claim to the second Cause of Action, cannot be more than \$44,000.00; that being the amount fixed by the pleadings of the defendant.

I further instruct you that in addition to the rental value of the equipment, and in addition to the loss of profits above referred to, the defendant may further recover, if you find from the evidence and my instructions that he had a right to recover

at all under the third Counter-Claim to the second Cause of Action, for such expenses as he may reasonably and prudently have incurred in good faith in attempting to diminish damages such as are held recoverable under my instructions, and this is so whether the effort is successful or not, provided that it was in good faith. [723] However, under this item the defendant can only recover as in other cases such damages as he has actually proved.

He claims to have installed new equipment for the purpose of reducing the damages that would otherwise result from the removal of the equipment. If you find that he is entitled to recover because of the removal of such equipment in the Coliseum Theatre at Ketchikan under these instructions, then you may allow him whatever money you may find he has actually paid out in connection with the purchase and installation of such new equipment; provided, that such monies were paid out in a reasonable and prudent attempt, made in good faith to diminish such damages as under these instructions are held to be recoverable; and he is entitled to recover such monies even though the installation of such new machinery or equipment did not result in reducing such damages; provided that the defendant acted in good faith and for the purposes above stated.

No. 11.

I further instruct you, Ladies and Gentlemen of the Jury, with reference to the fourth Counter-Claim set up by the defendant which is the Second

Counter-Claim to the Second Cause of Action stated in plaintiff's complaint, that if you find from the evidence under my instructions that the defendant paid out other monies to the plaintiff, for and on account of service charges and that such payments were made under duress, as duress is elsewhere defined, in these instructions, then I instruct you that the defendant is entitled to recover back the monies so paid by him on that account. [724]

No. 11-a.

You are instructed that evidence was received at the trial that defendant by his employees, prior to the service upon him or them of the writ of replevin herein in respect to the Ketchikan theatre, removed from the location and position in that theatre wherein it was installed by plaintiff on or about June 1, 1929, the sound reproducing equipment that was installed therein under the contract of March 28, 1929, plaintiff's exhibit 3.

You are further instructed that section 14 (3) of that contract provides that should said equipment or any part of it be removed, without plaintiff's consent, from the location and position in which it was installed by plaintiff, that such removal should constitute a termination of not only the said contract itself, but also of the license granted in said contract to defendant by plaintiff to use said sound reproducing equipment.

You are instructed that no evidence has been received in this case that plaintiff consented to such removal and therefore if you find that such equip-

ment was or had been removed by defendant from said theatre without plaintiff's consent, prior to the service upon him of the writ of replevin herein, you should return a verdict for the plaintiff covering the sound reproducing equipment at Ketchikan.

No. 11-b.

You are instructed that in this case evidence has been offered as to a competing theatre, namely, the Capitol Theatre, having been reopened in Juneau, Alaska, in a remodeled and a renovated condition and with new, modern and efficient sound reproducing equipment, on January 15, 1931, and as to a competing theatre, namely the Revilla theatre in Ketchikan, Alaska, having been re-opened in a remodeled and renovated condition and with new, modern and efficient sound reproducing equipment, in April, 1932.

If you believe that evidence to be true, then you are entitled in your deliberations to give consideration to the effect, [725] if any, that the operations of said Capitol Theatre had upon the receipts of the Juneau Coliseum Theatre on and after January 15th, 1931, and the effect, if any, that the operations of the Revilla Theatre had upon the receipts of the Ketchikan Coliseum Theatre after April, 1932.

No. 11-c.

You are instructed that no evidence was required to be offered at the trial in order to prove the general financial depression that has prevailed throughout the country during the past several

years, because under the law judicial notice is taken of that fact without the necessity of any evidence being offered thereon; and in your deliberations you may take into consideration that general depression and give it such weight as you may find was its reasonable effect, if any, upon the receipts of either or both of the defendant's Ketchikan and Juneau theatres during the period from April 20th, 1931 to May 1st, 1933 as to the Juneau theatre, and from April 28th, 1931 to May 1st, 1933 as to the Ketchikan theatre.

No. 11-d.

You are instructed that the defendant Gross, by virtue of the contracts of March 28th, 1929, did not acquire the exclusive right or license to use the plaintiff's sound reproducing equipment either in the Town of Juneau or the town of Ketchikan; the plaintiff corporation, at all times, reserved and had the right to sell or lease any of its machines or appliances for the reproduction of sound to any other person in either or both of said towns and the facts, if it be a fact, that said corporation plaintiff did lease or sell the same kind of equipment, or similar to that leased to the defendant Gross, to other moving picture operators at Juneau or Ketchikan, or at both places, has no bearing upon the issues in this case and you should not consider it. [726]

No. 11-e.

You are further instructed that in fixing the amount of damages, if any, that the defendant may

recover in this case, you must eliminate from your consideration entirely any damages on account of loss of good will; extra parts claimed to have been taken by plaintiff from defendant's theatres when it removed, or had removed, the equipment mentioned in its complaint; and installation costs, freight and cartage alleged to have been paid by defendant, for the reason that no evidence was offered in support thereof or they had previously been ordered stricken by the court.

No. 12.

I instruct you relative to the general question of damages that damages may be defined as a pecuniary compensation, recompense or satisfaction for an injury sustained or, as otherwise expressed, the pecuniary consequences which the law imposes for the breach of some duty or the violation of some right. They are those damages which naturally and necessarily result from the wrongful act or omission, that is to say, those which are traceable to and the probable and necessary result of, the injury or wrong done, or which the law implies or presumes to have accrued from the wrong complained of.

The fundamental and cardinal principle of the law of damages is that the injured party shall have compensation for the injury sustained. The injured party is entitled to be placed as near as may be in the condition which he would have occupied had he not suffered the injury complained of.

The rules of law respecting the recovery of damages are framed with reference to the just rights

of both parties; not merely what it might be right for an injured party to receive to afford just compensation for his injury, but also what it is just to compel the other party to pay. And so in no case should [727] the injured party be placed in a better position than he would be in had the alleged wrong not been done.

So in this case, in fixing the amount of damages, if any, which the defendant is entitled to recover, you will bear in mind at all times that the defendant is entitled to recover, if at all, only such amount as will compensate him for the injury sustained, if you find that he has sustained any injury or injuries by reason of the alleged unlawful acts of plaintiff.

No. 13.

This is a civil case, and in its consideration you will bear in mind that the burden of proof in all civil cases rests upon the party holding the affirmative of the issue to prove by a preponderance of the evidence the affirmative matter or issues made up by it or him.

By a preponderance of the evidence is meant the greater weight of the evidence; that evidence which in your opinion is the better evidence and which has the greater value and greater convincing power. This does not necessarily depend upon the number of witnesses testifying with respect to any question of fact, but it simply means that evidence which in your estimation has the greater weight or the greater value or the greater convincing power, and

which is, in your estimation, the most worthy of belief; and so, if after having heard and considered all the evidence in the case as to any issue, you are unable to say upon which side of that issue the evidence weighs the more heavily; or the evidence is evenly balanced on any particular issue in the case, then the party upon whom the burden rests to establish such issue must be deemed to have failed with regard to that issue.

You should first proceed to consider the claims of the plaintiff. When you have done this you should then proceed to consider the claims of the defendant under his Answer, and make your findings accordingly, keeping in mind always the fact that it [728] is incumbent upon each of the parties to, in turn, prove their affirmative allegations by a preponderance of the evidence.

No. 14.

You, Ladies and Gentlemen, are the sole judges of the facts in this case and of the credibility of witnesses and of the effect and value of evidence addressed and submitted to you at the trial.

You are, however, instructed by the court that your power of judging the effect of the evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence; that a witness wilfully false in one part of his testimony may be distrusted in others; that the oral admissions of a party should be viewed with caution; that evidence is to be estimated not only by its own intrinsic weight, but also according to

the evidence which it is in the power of one side to produce and of the other to contradict; and therefore if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

Before reaching a verdict you will carefully consider and compare all the testimony; you will observe the demeanor of the witnesses upon the stand; their interest in the result of your verdict, if any such interest is disclosed; their knowledge of the facts in relation to which they have testified; their opportunity for hearing, seeing and knowing the facts; the probability of the truth of their testimony; their intelligence or lack of intelligence, and all the other facts and circumstances given or appearing in the evidence surrounding the witnesses at the trial.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds. The direct evidence of one witness who is entitled to full credit is suf- [729] ficient for proof of any fact in this case, and a witness false in one part of his testimony is to be distrusted in other respects. Whenever it is possible you will reconcile the testimony. Where, however, it is not possible to do so, you should give credence to that testimony which, under all the facts and cir-

cumstances of the case, appeals to you to be the most worthy of belief.

In considering your verdict you are instructed that the testimony which has been ordered stricken by the court should not be considered by you for any purpose whatever.

You are also instructed that the opening statements of counsel, and the arguments of counsel are not evidence; and unless supported or borne out by testimony received in this case, are to be entirely disregarded for any purpose.

No. 15

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to single out one particular instruction and consider it to the exclusion of all the other instructions.

As you have been heretofore instructed, your duty is to determine the facts of the case from the evidence admitted, and to apply to those facts the law as given to you by the court in these instructions. The court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of the evidence you have heard or the credibility of witnesses, because the responsibility for the determination of the facts in this case rests upon you and upon you alone.

No. 16

When you retire to your jury room you will take with you the pleadings in this case, the Court's instructions and all [730] the admitted exhibits in the case.

You will then elect one of your number Foreman, whose duty it will be to represent you and speak for you in court and sign the verdict that you agree upon. All twelve of you must concur in any verdict you reach.

You will be given two forms of verdict. When you have finished your deliberations and have arrived at your verdict you will enter in the form of verdict provided for that purpose the verdict you agreed upon. You will then have your foreman sign the verdict so found and return the same into court in the presence of you all; and may your verdict speak the truth, without passion, without sympathy and without prejudice.

GEO. F. ALEXANDER,

Judge.

Given at Juneau, Alaska,
February 13, 1935. [731]

Thereupon plaintiff, in the presence of the jury and before it retired for deliberation, excepted to the court's foregoing instruction (No. 7, Par. 2), reading as follows:

"And in this connection, I instruct you that the said agreements (of March 28, 1929) or either of them, do not require the defendant

Gross to pay the plaintiff for periodical inspection and minor adjustment services.”

which exception was as follows:

“Take exception to instruction number 7, particularly that part of it commencing at line 15, page 23, (2nd Par.) as not being a true statement as to the effect of the contracts exhibits “1” and “3” of March 28th, 1929, and is not a statement in accord with either the law governing the contracts of March 28, 1929, or the facts produced in evidence as shown by the contract itself. We take the position there that throughout the case the omission of the amount in paragraph 6 does not make the service free.”

Thereupon plaintiff, in the presence of the jury and before it retired for deliberation, excepted to the court’s foregoing instruction (No. 2, Par. 8), reading as follows:

“And in this connection, I further instruct you that if you believe from the evidence that at the time of the execution of these alleged contracts (of September 4, 1929) the plaintiff was already legally bound to render the defendant periodical inspection and minor adjustment services, under the contracts of March 28, 1929, it cannot recover for such services.”

which exception was as follows:

“We take exception to instruction No. 2 * * * We take an exception to that part of the Court’s instruction commencing with line 20 on page 13 (Par. 8)” * * *

Thereupon plaintiff, in the presence of the jury and before it retired for deliberation, excepted to the court's foregoing instruction (No. 3, Par. 4), reading as follows: [732]

“In this connection, I instruct you that under the original agreement of March 28th, 1929, no agent or employee of the plaintiff is authorized to alter or modify those agreements or either of them in any way, unless such alteration or modification shall be approved in writing by the president or vice-president of the plaintiff corporation, or by such representative as may from time to time be designated in writing by either of such officers; and I instruct you further that there is no evidence that these alleged contracts were approved by either of such officers. There is before you, however, evidence to the effect that ‘Anderson’ had authority to effect certain contracts for and on behalf of plaintiff, and that said contracts were later ratified and confirmed by the plaintiff by its Board of Directors. I therefore instruct you that these alleged agreements of September 4th, 1929, have no binding force or effect unless they were executed and approved in accordance with said provisions of the original contracts, unless you find the parties afterwards voluntarily ratified these agreements.”

which exception was as follows:

“We except to that part of the court's instruction No. 3, commencing on line 21, page 15

(Par. 4) down to the remainder of that particular instruction 3, on the ground it does not state the true principle of law applicable to written instruments or contracts particularly, and that neither party is bound by the particular provision that only a president or vice-president could change these contracts if they afterwards agree to change them otherwise.”

Thereupon plaintiff, in the presence of the jury and before it retired for deliberation, excepted to the court's foregoing instructions (Nos. 8 and 10, Pars. 2, 3, 7, 9, these two instructions being the same except that No. 8 related to defendant's Coliseum Theatre at Juneau whereas No. 10 related to defendant's Coliseum Theatre at Ketchikan) reading as follows:

“* * * in this connection I instruct you that it is admitted by the plaintiff that the rental value of the equipment so taken out is \$1,050.00 per year (for each theatre) and that the amount to be fixed by you, if you find the defendant entitled to recover for such rental value, cannot be less than \$8,458.30 (for each theatre), together with 8% interest thereon from and after the date that such equipment was removed; and that the amount to be allowed by you on this item cannot be more than \$9,627.03 (for each theatre). [733]

“I further instruct you that if you find that the defendant is entitled to recover on his first

(and third) counter claim(s) to the first (and second) Cause(s) of Action, he may recover, in addition to the rental value of the equipment as above referred to, the profits, if any, lost by him from the operation of his Juneau (and Ketchikan) Coliseum theatre(s) because of the removal of said equipment;

* * * * *

“I further instruct you that the total amount of anticipated profits that can be recovered by the defendant under the first (and third) counterclaims to the first (and second) Cause(s) of action cannot be more than \$44,000.00 (under each counterclaim); that being the amount fixed by the pleadings of the defendant.

* * * * *

“He (defendant) claims to have installed new equipment for the purpose of reducing the damages that would otherwise result from the removal of the equipment. If you find that he is entitled to recover because of the removal of such equipment in the Coliseum theatre(s) at Juneau (and Ketchikan) under these instructions, then you may allow him whatever money you may find he has actually paid out in connection with the purchase and installation of such new equipment; provided, that such monies were paid out in a reasonable and prudent attempt, made in good faith to diminish such damages as under these instructions are

held to be recoverable; and he is entitled to recover such monies even though the installation of such new machinery or equipment did not result in reducing such damages; provided, that the defendant acted in good faith and for the purposes above stated.”

which exception was as follows:

“Also take exception to instruction number 8, Your Honor, particularly upon the ground we claim that is not a statement of the true measure of damages and no profits can be recoverable in this case in any event, and furthermore, that the defendant can not recover in this action upon his counterclaims in any event, and further, that portion concerning the purchase of new equipment, found on page 27 (last Par.) of that particular instruction, which we contend is not an element of damages in this case. * * * The same exception to instruction 10 as we took to instruction No. 8.”

Thereafter the jury having returned its verdict herein in favor of defendant and against plaintiff and judgment having been entered thereupon the following orders were made or entered herein in pursuance to the rules of this court and at the same term during which said judgment was entered and upon stipulation of the parties [734] herein, namely:

Order entered herein on April 6, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that execution be stayed herein until June 1, 1935, so that plaintiff may have sufficient time within which to effect its appeal and to give supersedeas and cost bond thereon, and that plaintiff be and is hereby allowed until June 1, 1935, within which to file and have allowed and settled its bill of exceptions herein.”

Order entered herein on May 20, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that execution be stayed herein until June 12, 1935 so that plaintiff may have sufficient time within which to effect its appeal and to give supersedeas and cost bond thereon and that plaintiff be and is hereby allowed until June 12, 1935 within which to perfect said appeal, to file and have allowed and settled its bill of exceptions herein.”

Order entered herein on June 12, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that plaintiff be and it is hereby granted until August 1, 1935, within which to file and have allowed and settled its bill of exceptions herein, and that the term of this Court, at which said judgment was entered, is hereby extended for said purpose.”

Order entered herein on July 30, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that plaintiff be and it is hereby granted until September 1, 1935, within which to file and have allowed and settled its bill of exceptions herein, and that the term of this Court, at which said judgment was entered, is hereby extended for said purpose.” [735]

Order entered herein on August 22, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that plaintiff be and it is hereby granted until October 15, 1935, within which to file and have allowed and settled its bill of exceptions herein, and that the term of this Court, at which said judgment was entered, is hereby extended for said purpose.”

Order entered herein on October 14, 1935, and appearing of record herein, namely:

“IT IS HEREBY ORDERED that plaintiff be and it is hereby granted until November 15, 1935, within which to file and have allowed and settled its bill of exceptions herein, and that the term of this Court, at which said judgment was entered, is hereby extended for said purpose.”

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS.

The foregoing Bill of Exceptions was filed on November 8, 1935, within the time allowed for the

filing thereof by order and the rules of this Court and I, the undersigned, District Judge for the First Judicial Division of the Territory of Alaska, who presided at the trial of the above-entitled cause, do hereby certify that the foregoing Bill of Exceptions contains all the material facts, matters, things, proceedings, objections, rulings and exceptions thereto, occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the trial, material to the issues presented by the Assignments of Error herein; and I further certify that the exhibits set forth, referred to, and abstracted therein, including defendant's exhibits H-1, H-2, H-3, H-4, H-5, H-6, H-7 and X, plaintiff's exhibits 7-A, 7-B, 8-A, 8-B, 9-A, 9-B, 10-A, 10-B, 10-C, 10-D, 10-E, 11-A, 11-B, 12-A, 12-B, 13-A, 13-B, 13-C, 13-D, 13-E, 13-F, 13-G, 13-H, 13-I, 13-J, 13-K, 13-L, 13-M, 13-N, 13-O, [736] 13-P, 14-A, 14-B, 14-C, 14-D, 14-E, 14-F, 15, 16, 17, 18, 19, 20, 21-A, 21-B, 21-C, 21-D, 21-E, 21-F, 21-G, 22-A, 22-B, 22-C, 22-D, 22-E, 22-F, 22-G, 23-A, 23-B and 56, the originals of all of which specifically enumerated defendant's and plaintiff's exhibits I certify in my opinion it is necessary and proper should be transferred to the Appellate Court for its inspection and which I hereby direct to be so transmitted, and which are hereby incorporated in and made a part of the foregoing Bill of Exceptions, constitute all the exhibits offered in evidence at the said trial material to the issues presented by the Assignments

of Error herein, and I hereby make all of said exhibits a part of the foregoing Bill of Exceptions; and I hereby settle and allow the foregoing Bill of Exceptions as a full, true and correct Bill of Exceptions in this cause and order the same filed as part of the records herein, and the Clerk of this Court is hereby directed to transmit said Bill of Exceptions with said original exhibits, above specifically enumerated, to the Circuit Court of Appeals for the Ninth Circuit.

I further certify, at defendant's request, that in my opinion it is necessary and proper, that plaintiff's original exhibits 1, 2, 3 and 4, and defendant's original exhibits I, I-1, I-2, I-3, I-4, I-5 and I-6, and K, K-1, K-2, K-3, K-4, K-5 and K-6 should be transferred to the Appellate Court for its inspection, and I hereby direct them to be so transmitted and they are hereby made a part of the foregoing Bill of Exceptions.

I further certify that the foregoing Bill of Exceptions complies with all the rules of this Court relating to the extension of the term for the purpose of presenting, settling and filing the Bill of Exceptions, and all orders made by me extending the time for such presentation, settling and filing, and that the foregoing Bill of Exceptions was presented and is hereby settled and allowed within the time prescribed for that purpose and at the same term of Court at which the judgment in said cause was [737] rendered and entered.

Done in open court this 9th day of November, 1935.

GEO. F. ALEXANDER

District Judge.

[Endorsed]: Entered Court Journal No. 10, pages 79-80.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division, Nov. 9, 1935. Robert E. Coughlin, Clerk, by J. W. Leivers, Deputy. [738]

[Title of Court and Cause.]

PLAINTIFF'S OBJECTIONS Re: BILL OF EXCEPTIONS, AND INCLUSION CERTAIN EVIDENCE THEREIN.

In response to defendant's objections to plaintiff's Bill of Exceptions as presented, plaintiff has prepared and tentatively inserted in that Bill of Exceptions the following additional evidence:

Page Numbers	Exhibits and Name of Witnesses
13 and 14	G. I. Albright
15 and 16	Danner Knowlton
17 and 18	J. D. Darragh, Jr.
19 and 20	Robert C. Little, Jr.
21 and 22	E. S. Tobey, Jr.
23 to 25	F. Foulon
26 and 27	H. C. Hurlburt

Page Numbers	Exhibits and Name of Witnesses
28 to 66	Ralph E. Lawrence
67 to 71	Herbert M. Wilcox
84	I. Goldstein
175 to 180	H. E. Cawthorne
184 to 195	Work sheets of exhibit I
202 to 213	Work sheets of exhibit I-1
216 to 227	Work sheets of exhibit I-2
229 to 240	Work sheets of exhibit I-3
242 to 245	Work sheets of exhibit I-4
261 to 272	Work sheets of exhibit K-1
274 to 285	Work sheets of exhibit K-2
287 to 298	Work sheets of exhibit K-3
300 to 311	Work sheets of exhibit K-4
313 to 316	Work sheets of exhibit K-5
407 to 408	E. B. Clayton
418 to 430	Louis Lemieux
431 to 432	Lockie McKinnon
433 to 439	Ned Lemieux
440 to 442	W. L. Dalner
443 to 444	J. F. Mullen

Last 9 lines of

Page 449 Lawrence Kubley

Last 16 lines, direct
examination,

Page 456 Eric Paulson

484 to 486 Ada W. Sharples

487 to 488 M. E. Monagle

489 to 496 N. A. Robinson

496 to 504 J. S. Briggs

Page Numbers	Exhibits and Name of Witnesses
505 to 509	J. A. Gage [739]
510 to 513	H. M. Wilcox
514	M. E. Monagle
515	R. H. Pearsall
516 to 518	Knowlton, Darragh, Tobey, Little, Foulon and Hurlburt
519 to 521	G. E. Mather
Last 20 lines page	
528 to 530	R. E. Robertson
530	Levinson and Gilmore
531 to 539	R. E. Lawrence
540	Stabler and Gross

Plaintiff contends that all evidence, both testimonial and documentary, relative to services and "service", including definitions thereof, and relative to duress and to any alleged troubles with or repairs in the equipment, which evidence is contained in the testimony of the above named witnesses and in the testimony of the witnesses Gross and Tuckett that have been included to meet defendant's objections to the Bill of Exceptions, is not material or necessary to a consideration of the points raised by its Assignments of Error herein and that the inclusion in the Bill of Exceptions of said evidence unnecessarily burdens the record; further that the work sheets of defendant's exhibits, series I and K, are not necessary for a proper consideration for said Assignments of Error and that

their inclusion in the Bill of Exceptions also unnecessarily burdens the record.

Respectfully submitted,

(Henry Roden)

(R. E. Robertson)

Attorneys for Plaintiff.

[Endorsed]: Copy of the foregoing statement, together with Bill of Exceptions including the above evidence received August 20th, 1935.

J. A. HELLENTHAL

Attorneys for Defendant. [740]

[Title of Court and Cause.]

MINUTE ORDER

Now at this time this matter comes before the court for an order settling and allowing Bill of Exceptions. R. E. Robertson Esq., and Henry Roden Esq., appearing in behalf of plaintiff and H. L. Faulkner Esquire, appearing in behalf of defendant. Counsel submitted arguments in behalf of that part of the testimony in regards to the departure from the territory by Chas. Tuckett. R. E. Robertson advised the court that statements made were included in Bill of Exceptions verbatim to which he takes exception. Court being fully advised signs the order allowing same, and included therein those

portions thereof, embraced in plaintiff's objections heretofore filed therein, to which plaintiff took an exception, which was allowed, and plaintiff also objected to inclusion therein of narrative statements submitted by defendants Counsel re said Tuckett's departure from the Territory, which were included therein on page 478 thereof, and plaintiff's exception thereto was allowed.

The above minute order is as recorded on page 80 of the Civil and Criminal Journal Number 10 and is dated as of November 9th, 1935. [741]

[Title of Court and Cause.]

ORDER ENLARGING RETURN DAY

Now, on this day, upon stipulation of the parties hereto by their respective counsel, and good cause being shown therefor, IT IS HEREBY ORDERED that the return day on the citation on appeal herein be enlarged and that plaintiff have until August 20, 1935, within which to file and docket its record on appeal with the Clerk of the Appellate Court in San Francisco, California.

DONE in open court this 11th day of July, 1935.

GEO. F. ALEXANDER

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division, July 11, 1935. Robert E. Coughlin, Clerk.

Entered Court Journal No. 9, page 438. [742]

[Title of Court and Cause.]

ORDER ENLARGING RETURN DAY

Now, on this day, upon stipulation of the parties hereto by their respective counsel, and good cause being shown therefor, IT IS HEREBY ORDERED that the return day on the citation on appeal herein be enlarged and that the plaintiff have until November 1, 1935, within which to file and docket its record on appeal with the Clerk of the Appellate Court in San Francisco, California.

DONE in open court this 10th day of August, 1935.

GEO. F. ALEXANDER

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division, Aug. 10, 1935. Robert E. Coughlin, Clerk.

Entered Court Journal No. 9, page 466. [743]

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR FILING,
ALLOWING AND SETTLING BILL OF
EXCEPTIONS.

Now, on this day, upon the oral stipulation of the parties hereto by their attorneys of record, and it appearing that plaintiff requires further time in which to prepare its bill of exceptions upon its appeal from the judgment heretofore entered in

this cause, and it further appearing that plaintiff was heretofore granted and the term of this court extended until October 15, 1935, within which plaintiff might file and have allowed and settled its bill of exceptions herein, IT IS HEREBY ORDERED *be* and it is hereby granted until November 15, 1935, within which to file and have allowed and settled its bill of exceptions herein, and that the term of this Court, at which said judgment was entered, is hereby extended for said purpose, and that the time for the return of the citation herein be and is hereby extended and enlarged until December 1, 1935.

DONE in open court this 14th day of October, 1935.

GEO. F. ALEXANDER

District Judge.

OK:

R. E. ROBERTSON,
Attorney for Plaintiff.

J. A. HELLENTHAL,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division, Oct. 14, 1935. Robert E. Coughlin, Clerk.

Entered Court Journal No. 10, page 12. [744]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court, Juneau, Alaska:

Please prepare a transcript of record in the above-entitled cause, including therein the following papers, to-wit:

1. Amended Complaint.
2. Amended Answer, as amended (by interlineation).
3. Demurrer to Amended Answer, as amended.
4. Order (Overruling Demurrer to Amended Answer, as amended), dated January 19, 1935.
5. Reply to Amended Answer, as amended.
6. Verdict.
7. Motion for New Trial.
8. Motion for Judgment Notwithstanding the Verdict.
9. Order, dated February 23, 1935, overruling Motion for New Trial and Motion for Judgment Notwithstanding Verdict.
10. Judgment.
11. Assignments of Error.
12. Petition for Appeal.
13. Order Allowing Appeal.
14. Bond on Appeal.
15. Order approving Bond on Appeal.
16. Original Citation on Appeal.
17. Bill of Exceptions, and Order Allowing It.
18. Plaintiff's Objections re: Bill of Exceptions and inclusion certain evidence therein.

19. Order, dated November 9, 1935, overruling Plaintiff's objections re: Inclusion certain evidence in Bill of Exceptions.

20. Order enlarging Return Day, dated July 11, 1935.

21. Order enlarging Return Day, dated August 10, 1935.

22. Order enlarging Return Day, dated October 14, 1935.

23. This Praecipe.

Kindly prepare said transcript in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit and forward it, together with the original exhibits as specified in the learned Trial Court's order of November 9, 1935, [745] allowing and settling the Bill of Exceptions, in accordance with said rules, to said Circuit Court of Appeals.

R. E. ROBERTSON

Attorney for Plaintiff.

[Endorsed]: Due service of the foregoing Praecipe admitted this November 14, 1935.

J. A. HELLENTHAL

Of Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division, Nov. 15, 1935. Robert E. Coughlin, Clerk, by J. W. Leivers, Deputy.

[746]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

United States of America,
District of Alaska,
Division No. 1—ss.

CERTIFICATE

I, ROBERT E. COUGHLIN, Clerk of the District Court for the District of Alaska, Division No. 1 hereby certify that the foregoing and hereto attached 747 pages of typewritten matter, numbered from 1 to 747, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record as prepared as per the praecipe of Appellant on file herein, and made a part hereof, wherein the ELECTRICAL RESEARCH CORPORATION, INC., a corporation, is appellant and W. D. GROSS, is appellee in case number 3167-A as the same appears of record and on file in my office, and that the same is by virtue of a petition for appeal and a citation issued thereon in this cause and the return thereof in accordance therewith,

I do further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to (\$282.95) Two hundred eighty two and ninety five cents has been paid to me by counsel for appellant.

I do further certify that, in accordance with the order of the learned Trial Court, I return herewith and as a part hereof, the following original exhibits, viz.: Plaintiff's exhibits 1, 2, 3, 4, 7-A, 7-B,

